

# EUROPEAN GOVERNMENTS AND POLITICS

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## PREFACE

The purpose and plan of this book are sufficiently obvious. After twenty years of teaching in the field of foreign and comparative government, I am still of the opinion that, while highly useful courses for undergraduate students undoubtedly can be developed on other lines, the best results in the survey type of course will usually be obtained by directing attention for successive periods to particular governmental systems viewed as entities—with always an eye out for significant side-lights from other systems and experiences, past or present. At all events, this is the procedure contemplated in the pages that follow.

Nineteen chapters dealing with the government and parties of Great Britain largely reproduce in condensed form a volume entitled *English Government and Politics* which I published five years ago. How much can happen in five years, even in a country which holds to its political heritage as faithfully as does modern Britain, is, however, illustrated impressively by the new matter which it has been necessary to introduce and the changes of emphasis and interpretation which events have forced upon me. As for the rest, the book has been written afresh throughout. Here, the undertaking has been perilous, if not presumptuous. The plan called for systematic treatment of the governmental systems of four major states of Continental Europe, *i.e.*, France, Germany, Italy, and Russia. Of the four, only one—France—has a government which antedates the World War; and if one had been so naïve as to think of government in that fair land as something that could simply be photographed once for all as it stood in, let us say, 1933, news that poured from the Parisian boulevards when the following pages were already in the printer's hands would have given him the rudest kind of a shock. Italy and Russia have political régimes that already have lived long enough to put the prophets to confusion, without, however, having acquired sufficient rootage to enable them to be described in terms other than of challenging experiment. Germany, of course, offered the problem beside which all others paled. When publishing a book of this same type in 1913, I described

a constitutional and political system in the Fatherland which, unknown to all of us, was fast approaching its downfall. When bringing out a second edition in 1920, I wrote hopefully of a new and more liberal order that had risen on the wreckage of the old. Fourteen years later, I find myself setting up a row of monuments to successive features of the Weimar system and speculating as to whether any substantial part of that well-meant but probably fore-doomed constitutional order will remain by the time when this volume issues from the press. Not as a portraiture of any single scheme of government in operation, but as a moving picture of a great people feeling its way hazardingly along the high road of political experience, the half-dozen chapters on Germany are here presented.

For advice and aid, I am indebted to a number of persons, but chiefly to my colleague, Professor Grayson L. Kirk, who assisted ably with the chapters on France and Germany, and to Miss Katharine Reimann, a doctor of philosophy of the University of Breslau and honorary fellow in political science at the University of Wisconsin, who helped me clear up a number of difficulties presented by the politics of her own country. My secretary, Miss Mary C. Trackett, has likewise been unfailingly helpful.

FREDERIC A. OGG.

# CONTENTS

CHAPTER	PAGE
I. INTRODUCTORY: THE MODERN WORLD AND ITS GOVERNMENTS . . . . .	I

## PART I. PARLIAMENTARY DEMOCRACIES

### 1. GREAT BRITAIN

II. THE PANORAMA OF ENGLISH CONSTITUTIONAL DEVELOPMENT . . . . .	17
III. THE CONSTITUTION AND GOVERNMENT TODAY . . . . .	40
IV. THE CROWN—STATUS AND USES OF KINGSHIP . . . . .	59
V. THE MINISTRY AND THE CABINET . . . . .	79
VI. THE CABINET AT WORK . . . . .	98
VII. THE EXECUTIVE DEPARTMENTS . . . . .	114
VIII. THE PERMANENT CIVIL SERVICE . . . . .	142
IX. THE HOUSE OF COMMONS—CONSTITUENCIES AND VOTERS	165
X. PARLIAMENTARY ELECTIONS . . . . .	186
XI. THE HOUSE OF LORDS AND THE PROBLEM OF A SECOND CHAMBER . . . . .	210
XII. PARLIAMENTARY MACHINERY AND PAGEANTRY . . . . .	232
XIII. PARLIAMENT AT WORK: LAW-MAKING . . . . .	252
XIV. PARLIAMENT AT WORK: FINANCE . . . . .	273
XV. PARLIAMENTARY GOVERNMENT—TENDENCIES AND PROBLEMS . . . . .	290
XVI. DEVELOPMENT OF THE PARTY SYSTEM . . . . .	311
XVII. PARTY ORGANIZATION . . . . .	339
XVIII. LAW AND JUSTICE . . . . .	359
XIX. LOCAL GOVERNMENT AND ADMINISTRATION . . . . .	385
XX. UNITED KINGDOM AND COMMONWEALTH OF NATIONS . . . . .	408

### 2. FRANCE

XXI. THE RISE OF CONSTITUTIONAL GOVERNMENT . . . . .	435
XXII. THE CONSTITUTION OF THE THIRD REPUBLIC . . . . .	456
XXIII. THE PRESIDENT OF THE REPUBLIC . . . . .	473
XXIV. NATIONAL ADMINISTRATION . . . . .	493

CHAPTER	PAGE
XXV. CHAMBER OF DEPUTIES AND SENATE . . . . .	519
XXVI. THE PARLIAMENTARY SYSTEM . . . . .	547
XXVII. POLITICAL PARTIES . . . . .	573
XXVIII. LAW AND JUSTICE . . . . .	592
XXIX. LOCAL GOVERNMENT AND ADMINISTRATION . . . . .	617

## PART II. GOVERNMENTS UNDER DICTATORSHIP

### 1. GERMANY

XXX. FROM EMPIRE TO REPUBLIC . . . . .	643
XXXI. THE REPUBLICAN CONSTITUTIONAL SYSTEM . . . . .	669
XXXII. PRESIDENT, CABINET, AND NATIONAL ADMINISTRATION UNDER THE WEIMAR CONSTITUTION . . . . .	700
XXXIII. PARLIAMENT—AN EXPERIMENT IN POPULAR GOVERN- MENT . . . . .	729
XXXIV. POLITICAL PARTIES AND THE RISE OF DICTATORSHIP . . . . .	755
XXXV. LAW, JUSTICE, AND LOCAL GOVERNMENT . . . . .	785

### 2. ITALY

XXXVI. THE PRE-WAR FRAMEWORK OF PARLIAMENTARY GOVERN- MENT . . . . .	808
XXXVII. GOVERNMENT UNDER THE FASCISTS . . . . .	824

### 3. RUSSIA

XXXVIII. THE RISE OF THE SOVIET RÉGIME . . . . .	844
XXXIX. GOVERNMENT AND POLITICS OF THE U.S.S.R. . . . .	863
INDEX . . . . .	889

**EUROPEAN GOVERNMENTS  
AND POLITICS**



# EUROPEAN GOVERNMENTS AND POLITICS

## CHAPTER I

### INTRODUCTORY: THE MODERN WORLD AND ITS GOVERNMENTS

No one knows how or when men first came under the authority of government. No one can say what untried forms of government may yet be devised, or what undreamt of powers and functions governments may in time be found exercising. People everywhere in these days, however, live under government of some description, and no instrumentality of human association except the family is commonly regarded as more natural and indispensable. Wherever a person goes, government envelops him as does the air he breathes. It protects his life and property, regulates his business relationships, adjusts his disputes, fixes conditions under which he may labor, educates his children, provides him with highways and streets, carries his written messages, licenses him to operate a radio station or to drive a motor-car—not neglecting to tax him for the support of the many services which it renders.

The lofty rôle  
of govern-  
ment

To be sure, men have not always agreed—do not now agree—that government should undertake all of these things. Anarchists have tried to argue that the state is only an instrument of tyranny and government a usurpation of power. They have never been able to show, however, how a civilized people could long exist and prosper without some kind of political organization, *i.e.*, without something in the nature of what we call government; and, speaking practically, the only question of genuine import is as to how much government it is desirable to have, and in what form. On the matter of amount, there have always been wide differences of opinion. Individualists have taken the position that men, knowing their own interests best, ought to be allowed a maximum of initiative and freedom, and that government ought hardly to undertake more than to maintain domestic

Different  
views of gov-  
ernmental  
functions

## INTRODUCTORY

order and prevent attack or oppression from abroad. In an age when people were in revolt against the paternalism of unreformed or reactionary monarchies, this was an attractive doctrine; and it underlay not only the French Declaration of Rights of 1789, but the American Declaration of Independence, the bills of rights in the Revolutionary constitutions of the American states, and the entire Jeffersonian political philosophy. On the other hand, there is the view that for government merely to stand with folded arms except when action is required to prevent men from injuring one another is not enough; that government must be something more than a glorified policeman; that it must promote human well-being, actively and positively as well as negatively, by stretching its regulating arm in a multitude of directions - into business, industry, banking, insurance, trade, transportation, education, health, and what not—with no restrictions upon the stimulus it may apply, the help it may give, and the restraints it may impose except such as flow from considerations of the maximum general well-being, or perchance temporarily from constitutional limitations. Further even than this, the socialist would go. For, believing the competitive, capitalistic system a prolific source of social ills, he not only would have much more of collectivism and regulation than commonly prevails, but would do away with private ownership and control of the instrumentalities of production and distribution, and would make the state itself, on a grand scale, an owner, employer, and manager in all that pertains to the economic relationships of men. Under a régime of his planning, government would indeed be an enterprise of colossal proportions.

Reasons for  
expansion of  
functions

One need not go far with the study of leading governmental systems dealt with in this book to be impressed with the extent to which mankind has now abandoned the *laissez-faire* points of view of the eighteenth and nineteenth centuries. Indeed he has but to look about him, in whatever environment he lives, to be impressed with the same thing. To be sure, protest is always heard when governmental activity is pushed into some new domain or regulative authority tightened; in extreme cases, revolution may seem the only method of attaining the objective. Control by government, however, in the presumed interest of the general good, is the towering fact of our day. In Russia, it has reached a "new high" in a proletarian Commu-



nist dictatorship; in Italy, in a bourgeois Fascist dictatorship; in Germany, in the rule of a Hitler; in the United States, in an N.R.A., an A.A.A., and a whole galaxy of new and widely penetrating regulative agencies calculated to assist in pulling the country out of the depths of industrial depression. Elsewhere, the trend has manifested itself less spectacularly, but nevertheless decisively, through new constitutional provisions, expanding legislation, decrees and ordinances, and ever-developing usage. The reason lies in no mere change of intellectual fashions, but rather in the very practical fact that a new world has arisen since Rousseau and Bentham and Jefferson evolved their political formulae—a new world both of things and of ideas. First of all, inventions and the resulting technical revolution transformed a world of stage coaches, hand looms, and tallow candles into a world of railroads, oil-burning leviathans, telegraphs, telephones, motor-cars, airplanes, and radio, giving government new instrumentalities of almost magical power with which to execute its will, and at the same time imposing upon it stupendous and increasingly technical tasks of inspection, regulation, and control.<sup>1</sup> Along with this development went, in the second place, a remarkable increase in the range, intimacy, and complexity of social contacts and relationships, notably in newly and extensively urbanized populations, which likewise has thrust upon government burdens and responsibilities undreamt of a hundred, or even fifty, years ago. The growth of popular education has put pressure on governments to undertake works of enlightenment, beneficence, and amelioration formerly undertaken, if at all, by agencies of religion and private philanthropy. The spread of political democracy has opened up new avenues through which public activities can be initiated and governmental projects planned, launched, and driven forward. Most recently of all, world-wide economic depression and social distress have, as no American needs to be reminded, brought to the fore programs of improvement and relief in which government plays a rôle of astounding proportions. The upshot is that within a period which is but a minute or two by the clock of human life on our planet, the work of government, as demanded by the conditions and ideas of a technological age, and of a gen-

eration caught in the maelstrom of economic disorder, has increased decidedly more than in all past ages combined. Every group and interest—farmers, business men, bankers, manufacturers, shippers, manual laborers, teachers, authors, civil servants, soldiers—expects government to do something for it, even while fearing that it will do *too much* for competing groups.

Governmental areas

In the ancient world and during the Middle Ages, government functioned mainly in either diminutive city states or far-flung empires. Between the thirteenth and fifteenth centuries, however, the theory of empire weakened in the Western world, strong monarchies emerged from feudal chaos, national consciousness and aspirations developed, and the principal area of government came to be neither empire nor city but the independent, politically self-contained national state, typified by modern England, France, and Spain. In Europe and the Americas, the national state—sometimes with a population highly homogeneous ethnically and linguistically, sometimes instead with a jumble of races and tongues—holds the field today; and Asia offers its own examples in Japan, Siam, Persia, Turkey, and others. A few existing national states are decidedly small, *e.g.*, Monaco and San Marino, with areas of but eight and thirty-two square miles and populations of but 23,000 and 13,000 respectively. Nearly all, however, are of considerable size, both geographically and in population; some, as China, Russia, and the United States, are decidedly large. In any event, the areas employed for governmental purposes are, of course, not simply the countries in their entirety, but also numerous subdivisions—provinces, counties, districts, cantons, towns, and what not—varying in type, name, and form from country to country, and endowed with differing powers, functions, and governing authorities. Furthermore, just as the different sets of areas are physically superimposed one upon another, so their mechanisms and functions of government are inextricably interlocked. “At bottom, the governmental system of any national state is a single structure, all of the parts dovetailed into an articulated and integral mechanism. There is no such thing as a ‘national’ government which can be studied and understood without taking into account the organization, powers, and functions of divisional areas. Conversely, ‘local’ government is at many points

incoherent and meaningless except as viewed in its interconnections with the national system of which it forms a phase or part . . . Government in any national state is, from top to bottom, an entity; if not a seamless robe, it is, at all events, a single garment.”<sup>1</sup>

Few questions have stirred more controversy in modern times than those connected with the matter of governmental areas. Wars and treaties have repeatedly remade the map on which national states are depicted; and although the post-war settlements of 1919-20 were designed to rectify and stabilize the map of central and southeastern Europe, discontent with the arrangements arrived at is heard on every hand. Every nation, too, has difficult problems concerning the allocation of governmental powers and responsibilities among older or newer subordinate areas within its bounds—the question of how to distribute functions between central and local governments, of how many and what types of local government areas to maintain, of county consolidation in the United States, of geographical “devolution” in Great Britain, of “regionalism” in France, of extinguishing the *Länder* in Germany. Finally, there is the challenging question of whether, in a rapidly shrinking world, national states may longer expect to go their own way entirely in matters of government, or whether they must be prepared to associate themselves under some form of international government, such as indeed already exists in an organ like the Permanent Court of International Justice.

If human government has nowhere been brought to the level of intelligence and efficiency dreamed of by Plato two millenniums ago, and by philosophers and reformers in all ages since, the failure can hardly be attributed to inexperience. And the richness of our experience in political matters arises not only from the long stretches of time through which it has been built up (even Aristotle, two thousand years ago, could not discover when or how government began), but from the diversified forms that government has taken and the bewildering variety of purposes, methods, and processes that it has displayed. No two governments ever have been, or ever will be, exactly alike. It is true that from the days of the Greek philosophers to the

Multifold  
forms of gov-  
ernment

present it has been customary to throw political systems into certain stereotyped categories or groups. The commonest classification has been that into monarchies, aristocracies, and democracies. But the monarchies of history have varied all the way from ancient Oriental despotisms to modern Britain, and aristocracies and democracies have conformed hardly more to any particular types. Classifications are useful; but none has ever been devised into which all known forms of government can be fitted without doing violence to the facts.

If a twentieth-century Aristotle were to attempt a realistic classification of merely the governments existing at the present day, he would soon be in trouble. Among monarchies, he would find Great Britain, with a king and a court and all the trappings of royalty, yet with all the essentials, too, of a republican system; Italy, with kingship completely eclipsed by a Fascist dictatorship; Yugoslavia, Bulgaria, and Rumania with kings enjoying a good deal of real power; Japan, with an emperor who is still in a very real sense the patriarchal and theocratic head of the nation, and regarded by most native constitutional lawyers as legally absolute. "Among republics he would discover states with as widely differing political systems as those of the United States, France, Mexico, Turkey, and China. He would find unitary and highly integrated systems like those of France and Japan; federal systems such as those of the United States, Canada, and Switzerland; systems that partake strongly of federalism, without classifying as truly federal, such as those of the German Republic (at all events before the rise of dictatorship) and the Union of South Africa. He would come upon cabinet systems that actually work as such, *e.g.*, in Great Britain, France, Belgium, and Australia; cabinet systems that are more nominal than real, as in Japan; presidential systems in the United States and various states of Latin America. He would have to set up a special category for Russia, Italy, and Germany, with their one-party dictatorial régimes; for China, with its supposedly transitional Nationalist system; for Poland, with its curious combination of parliamentary government and dictatorship; for Hungary with its kingless 'monarchy'; for India with its dyarchy. He might well be baffled by the unique governmental arrangements existing in the British Commonwealth of Nations; and if he got by this difficulty, he would still have

to decide whether the League of Nations is a government, and how to classify it.”<sup>1</sup>

Why political systems have assumed so many forms, notwithstanding that the essential work of government is everywhere largely the same, is not difficult to discover. In the first place, government is an expression of the genius of a people, no less than is its economic achievement, its literature, or its art. One would no more expect the Englishman, the Spaniard, and the Siamese to have the same ideas and methods in politics than the Hollander and the Mexican to think alike on land tenures or religion. In the second place, government operates in any age among peoples of very dissimilar political background and experience. Knowing what the political history of Italy has been, one would not go to that country looking for a system of representative government as stabilized and matured as the English. Remembering the traditions of government in the Ottoman Empire, one would not be so naïve as to suppose that the setting up of a republic at Angora put the new Ottoman state on all fours with Switzerland or France or Canada. Racial traits, social heritages, physical environment, historical developments and accidents – all help to make a people’s political character what it is; and the wonder is that the play of these diversifying forces permits as much similarity of governmental machinery and processes as exists.

Reason for  
variety of  
forms

Students of government approach their subject from many different angles and pursue their work by widely differing methods. The method of some has been mainly historical. They have been satisfied to search out and describe the institutions of the past, or, if aiming at an explanation of those of the present, have sought it, as Sir Frederick Pollock says, “more in knowledge of what those institutions have been and how they came to be what they are than in the analysis of them as they stand.”<sup>2</sup> The method has its uses. When Aristotle remarked that if a man would understand anything, he should observe its beginning and its development, he doubtless had government in mind as much as any other human contrivance. Learning the history of a political system, however, hardly does more than put one in a position to begin studying it in a fruitful manner.

Methods of  
studying gov-  
ernment:

1 Historical

<sup>1</sup> F. A. Ogg and P. O. Ray, *Essentials of American Government* (New York, 1932), 8–9.

<sup>2</sup> *An Introduction to the History of the Science of Politics* (London, 1890), 11.

## 2. Philosophical

A second method is the philosophical. From Plato to scholars of a generation ago like Bosanquet and Thomas H. Green, this has been the approach of scores of writers, whose works make up a very considerable part of the existing literature of politics. Some of these men, like Plato himself and Sir Thomas More, produced books that were frankly imaginative and utopian.<sup>1</sup> Others, like Hegel, discussed politics in the rarified atmosphere of metaphysics. Others again, like Hobbes, contributed imposing treatises dealing with politics on large, general, and to a considerable extent unreal, lines. Still others, like Montesquieu, Locke, and Burke, kept their feet on the ground and had actual governmental systems and situations in mind even while they expounded theories and principles. Political philosophy is interesting, stimulating, informing, and significant. It may be conceded to be the highest form of political discussion. Buttressed by insufficient data drawn from the actualities of political life, it is apt, however, to be barren and futile.

## 3. Comparative

A third method, and the one with which we have to do in this book, is the comparative. It is based on the idea that the best way to become acquainted with the science and art of government is to look about among the political systems operating in the present-day world, make analytical studies of them one by one, and bring their various features and characteristics into carefully considered comparison and contrast. This method does not exclude either historical investigation or philosophical generalization.<sup>2</sup> Each government studied must be viewed in the light of the circumstances influencing its development from the beginning; and the effort expended will fail of its finest results if it does not eventuate in deductions and conclusions and even, indeed, in a sort of philosophy of the subject. But the road to what is sought lies through observation, description, analysis, and comparison.

The comparative method has been used almost as far back as the study of government extends. Aristotle, the father of political science, employed it as intelligently indeed, and certainly (within the limitations of his times) as effectively, as any scholar since his day. Before writing his remarkable disquisition entitled

<sup>1</sup> Plato's *Republic*; More's *Utopia*.

<sup>2</sup> Or, of course, legal analysis, statistical investigation, or sociological interpretation.

*Politics*, he laboriously brought together as full information as he could obtain concerning practically all then existing governmental systems, both Hellenic and barbarian. More than 150 actually operating "polities," or schemes of government, are said to have been analyzed in a treatise which is cited in ancient literature as *The Constitutions*. Unfortunately, most of this earliest of known works on comparative government has been lost—all, indeed, except "The Constitution of Athens," rediscovered in 1860, and a few miscellaneous fragments. But through the medium of the later scientific and philosophic *Politics* the world has been vastly enriched by what was done. Machiavelli in the sixteenth century, Montesquieu and Condorcet in the eighteenth, De Tocqueville and Guizot in the early nineteenth, Laboulaye, Bryce, Dicey, Sidgwick, Burgess, Woodrow Wilson, and A. Lawrence Lowell in days nearer our own, pursued the comparative method, along with scores of other inquirers in different lands.

The comparative method of study is, it must be admitted, not the easiest. Far simpler is it merely to trace an outline of political history, or even to spin theories of what government might or should be. To gain an adequate knowledge of even a single political system requires industry and ingenuity. It is not enough simply to bring together the bald facts of structure and function. These, to be sure, must be known. But no study of a government has much point that does not view it as a "going concern," putting stress chiefly on finding out how it actually works from day to day, and why. And this is no mere matter of studying documents. It is not on pages of cold type that government lives and functions, but in legislative halls, in administrative offices, in court rooms—often, too, in the practical, human, frequently commonplace, and sometimes sordid associations of the club, the newspaper office, the street, and the golf-field. Government is a complex not only of formal institutions, but of ideas, motives, and behavior; and it is no mean achievement to gain an acquaintance with even a single system in its really significant phases and ramifications.

Equally exacting is the work of comparison. It presupposes a good knowledge of at least two governments—more if it is to be very illuminating or conclusive. And it is beset by pitfalls. It brings out instructively the contrasted political institutions

Difficulty of  
the compara-  
tive method

and practices that grow up indigenously among different peoples, and, conversely, the fluidity of these institutions and usages which causes them to spread across national boundaries and permeate alien systems, as seen, for example, in the influence of English cabinet government in Continental Europe. But it exposes the student to grave dangers of superficial observation and fallacious reasoning. Differences of conditions, standards, and experiences are easily overlooked or underestimated; false analogies are readily drawn. Just as the scientific anthropologist, finding similar weapons or utensils to have been in use in widely separated places, hesitates before inferring that there is any explanation more significant than mere coincidence, or, let us say, a case of similar needs and circumstances calling out similar inventions and adaptations, so the student of government must ever be on his guard against leaping to conclusions concerning the relationships of institutions or usages found in the same country in different periods of time or in different countries, contemporaneously or otherwise.

Advantages  
of the  
method

Nevertheless, the scientific study of government on comparative lines is exceedingly instructive. In addition to the intellectual consideration that it contributes best to a comprehension of government in general, as a science and as an art, it offers two important practical advantages. First, it acquaints the student with the agencies of political control in countries other than his own, and puts him in a position to understand the news from abroad and to take intelligent attitudes on questions of international sweep and significance. For the American, in these days of increasing contacts with Europe, the Far East, and other portions of the globe, this is a matter of high import. But equally to be stressed is the aid which the study of foreign governments gives in understanding the particular political system under which one happens to live. The Englishman will have a clearer comprehension of the genius of the British constitution if he knows also the German, the French, and the Belgian constitutions; the Frenchman will know better how to deal with his problems of administrative decentralization and civil service reform if he knows how these matters have been dealt with by his neighbors; the American can better understand the conditions, limits, and implications of presidential leadership if



he is familiar with the cabinet systems of Britain and France and Canada.<sup>1</sup>

One who sets out to study governments comparatively faces a wide-sweeping field. There are literally scores of political systems, independent and subordinate, having some claim upon his attention. Of course, not all are equally important or instructive; and fortunately he can reasonably attain his object by knowing four or five, judiciously selected, and merely noting unusual or otherwise significant features of the rest.

Groups of governments challenging attention:

What are the main directions in which he must turn his eyes? Assuming that he is an American, well informed (by way of a beginning) upon the government and politics of his own country, five or six groups or types of politics challenge his attention. The first, and decidedly the most important, is the governments of the far-flung English-speaking world—Britain herself and the dominions comprised within what is now appropriately termed the British Commonwealth of Nations. "England," says a modern historian, "has taken the lead in solving the problem of constitutional government; of government, that is, with authority but limited by law, controlled by opinion, and respecting personal right and freedom. This she has done for the world, and herein lies the world's chief interest in her history."<sup>2</sup> The Greeks developed political institutions of great importance, but only for little city states, controlled by a favored few. Rome showed high political genius, yet permitted a free republic to be transformed gradually into an absolute empire, and was later influential rather through her system of law than through her political institutions. Except for brief intervals and in small localities, Continental Europe knew nothing of constitutional government before the end of the eighteenth century, and attained it in some measure even then only by the costly mode of revolution.

1. Governments of English-speaking lands

England, on the other hand, was enabled by the aptitudes of her people and the security of her insular position to acquire a great, living, expanding constitutional system whose history unfolds impressively through fifteen hundred years. The oldest, in many of its features, of all contemporary frames of govern-

<sup>1</sup> A brief but suggestive exposition of the method of comparative government will be found in Lord Bryce, *Modern Democracies* (New York, 1921), I, Chap. ii.

<sup>2</sup> G. Smith, *The United Kingdom* (New York, 1899), I, 1.

ment, the English constitution has also the distinction of having been by far the most widely and successfully imitated. Hardly a plan of government anywhere in the civilized world fails to show significant influence of the English system; many have been modelled directly upon it in most of their fundamental features. Small wonder that the student of comparative government usually chooses, as indeed he should, to begin his studies in the European field with Great Britain, the more readily when he realizes that in few parts of the world today are the currents of political thought and action flowing more swiftly. Britain is truly, as a recent writer reminds us, "the greatest existing school of politics." The American student will be mindful also of the fact that his own government and the British have a common substructure; that "the creation and establishment of our judicial institutions and common law, of the supremacy of law over the government, of our representative system, of the popular control of taxation, of the responsibility of ministers of government to the legislature, and finally of the principle, fundamental to all else, of the sovereignty of the people, were the work of our English ancestors."<sup>1</sup>

Not only Britain herself, but the great commonwealths that have grown up overseas, must receive consideration. Here—as also in the United States—can be traced the absorbingly interesting outcome of transplanting English political institutions into new environments, where, however, they have been operated in the main by people of British antecedents. Canada, Australia, New Zealand, South Africa—all offer fertile fields of study; and the American student, again, will particularly find profit in comparing the course which representative government has taken in these newer commonwealths with that familiar to him in his own land.

2. Govern-  
ments of non-  
English-  
speaking  
lands

Other major groups or types of polities that call for attention can be indicated briefly. One is the governments of Latin Europe, chiefly France, but also Italy, Spain, and Portugal. In all of these countries, governments can be studied which represent the fruits of revolt against eighteenth-century absolutism, of passionate experiment with liberalism, of oscillations between reactionism and democracy. In these days, Italy especially chal-

<sup>1</sup>G. B. Adams, *Outline Sketch of English Constitutional History* (New Haven, 1918), 4-5.

lenges attention because of its anti-democratic Fascist régime and Spain because of its swing (at least temporarily) in the opposite direction toward genuine popular government. Another group comprises the governments of the Teutonic and Scandinavian states—the German and Austrian republics, Denmark, Norway, and Sweden. Here, of course, the political experience of Germany, first under Hohenzollern monarchy, then under a republican constitution for which high hopes were entertained, and more recently under “Nazi” dictatorship, will be peculiarly instructive. The predominantly Slavic “succession states”—notably Czechoslovakia and Yugoslavia—together with Poland, Hungary, Rumania, and Bulgaria, present a field interesting mainly for the not too promising experiments there going on in the upbuilding of popular systems of government on soil to which hitherto they have been largely alien. Russia makes strong appeal because of the novel politico-economic arrangements prevailing over its wide areas since 1917, and Switzerland, with its federalism, its initiative and referendum, its unique type of executive, and its surviving primary assemblies, has a significance for the student of popular government out of all proportion to the space which the little republic occupies on the map.

Outside of the English-speaking world and Continental Europe, two groups of governments claim attention chiefly, *i.e.*, those of Latin America and of the Far East. The first group is interesting because of the curious consequences that have flowed from well-meant but generally inexperienced attempts to adapt political systems of Iberian origin to the conditions and needs of independent republican states. The second makes appeal because of the persistent efforts which are being made to infuse into a constitutional but nevertheless prevailingly autocratic system of government in Japan the spirit and outlook of political liberalism; perhaps even more because of the bold, even if as yet not notably successful, efforts of more radical reformers in China to erect on soil hastily cleared by revolution a political structure copied—perhaps too freely—from those of Western Europe and America.

The survey upon which we are entering here does not purport to cover all of these vast and far-flung fields. Except for occasional illustrations drawn from other systems, it will be confined to the governments of five principal European states: Great Britain first and at greatest length; France, for purposes

Governments  
to be dealt  
with in this  
book

of comparing another parliamentary democracy; and afterwards Germany, Italy, and Russia, as lands in which may be viewed that most challenging of present-day political institutions, *i.e.*, dictatorship. To undertake more would not be feasible within the covers of a single volume. Happily, the scope thus fixed—assuming, as already indicated, that the government of the United States is known sufficiently to make it an additional basis for comparison—is amply broad to ensure the study richness of substance and significance of conclusions.

**PART I**  
**PARLIAMENTARY DEMOCRACIES**



# 1. GREAT BRITAIN

## CHAPTER II

### THE PANORAMA OF ENGLISH CONSTITUTIONAL DEVELOPMENT

The starting points of English political institutions and practices lie scattered along a high road of national history stretching thirteen or fourteen hundred years into the past. With the exception of a brief interval at the middle of the seventeenth century, when a flood tide of reform broke accustomed moorings and swept the country into a troubled sea of republicanism, the constitution's peaceful and orderly development has never been seriously interrupted. Other lands, *e.g.*, France, Germany, and Russia, have severed strong ties with the past and set up new governments—in some instances, a number of times. In all Continental Europe, there is hardly a government today that antedates 1800; few go back of 1870; half or more have risen since 1914. The same is true in other parts of the world, where perfectly definite dates can be assigned for the creation of new systems or the remodelling of old ones. England, however, has moved along an essentially continuous constitutional pathway, readjusting her institutions slowly and cautiously to changing conditions and needs. She has travelled a long distance, and her government today is a very different affair from that of the times of the Conqueror, or of Elizabeth, or of George III, or even of Victoria. A Pitt or a Burke—even a Bagehot or a Gladstone—wandering about the Whitehall or Westminster of Ramsay MacDonald would feel himself almost a stranger. What he would encounter would, nevertheless, remind him strongly of the past; much would be essentially as it was when he first walked the earth, and indeed long before. A main characteristic of English constitutional and political experience has been its steady and cumulative sweep through the centuries.

Continuity  
through the  
centuries

The first scene disclosed in the panorama is the primitive Britain of the Celts, the Romans, and the Saxons. The spectator

The Anglo-Saxon period:

will not need to pay much attention to the warlike Celtic tribes which Caesar, at his famous crossing of the Channel in 54 B.C., found in sole possession of both the larger island and its smaller neighbor to the west. Their Welsh and Irish descendants contributed heavily to the cultural history of that section of the world, and the Irish now have a substantially independent government under the Free State constitution adopted in 1922. But neither Welsh nor Irish of earlier times had much to do with making the English government what it is today. No more did the Romans. A hundred years after Caesar, the wide-sweeping boundaries of their empire were extended to include a province newly formed out of southern and central Britain. But when growing misfortunes compelled them to withdraw from the country in 407 A.D., they left behind them nothing of lasting political import.

The case of the Saxons was far otherwise. Swarming across the North Sea after the middle of the fifth century A.D., they and their kinsmen, Angles and Danes, pushed the defenseless Celts westward, possessed themselves of most of the larger island, and became the founders of modern English civilization. Englishmen of today are by no means simply twentieth-century Saxons. Celtic, Norman, and other strains are woven deeply into the national stock, and English or British culture and institutions are too often referred to as simply "Anglo-Saxon." Nevertheless, the basic element in the England that we know is unquestionably Saxon; and the first period to which the growth of English political institutions can be traced is that of Saxon settlement and dominion, extending from the fifth-century incursions to the Norman Conquest in 1066. The contributions of these centuries were not as extensive as was formerly supposed, because it has been shown that, contrary to the views of many English and American historians up to less than a generation ago, representative government did not originate in the German forests and come down through Saxon days into mediaeval and modern England.<sup>1</sup> Nevertheless, the period contributed one institution, *i.e.*, kingship, which has been basic to all English constitutional development; in addition, it left the country covered with a network of areas of local government which connect closely with those employed in our own day.

<sup>1</sup> See p. 26 below.



When the Saxon invaders entered the land, they had *principes*,<sup>1</sup> or chiefs, but no kings. It was not long, however, before leaders of victorious war-bands became heads of more or less stable territorial governments and began calling themselves by royal titles. For a time, there were many such dignitaries; but gradually Kent, Sussex, Wessex, Essex, East Anglia, Mercia, and Northumberland emerged as the "seven kingdoms"; and as a result of further wars and annexations, the king of Wessex became, in the ninth century, ruler of the consolidated country. The united English nation was born, and a dynasty was established from which George V today can trace descent. Even after the final unification, Saxon kingship was not very impressive. Of course there were strong kings and weak kings, but even the strongest had no great amount of independent power. The king was expected to lead his people bravely and successfully in war, and he presided over assemblies or synods of the church. But, even though supreme judge, he usually had no very effective control over the administration of justice; and the "dooms," or laws, which he promulgated and enforced as best he could were few and simple, and besides were subject to appeal by a *witenagemot*, or "council of wise men," called together three or four times a year.

This "witan" had no fixed composition, but consisted of officers of the royal household, bishops and abbots, aldermen of the shires, and other people of importance whom the king found it expedient to summon. There were no elected members, and the body had no representative character except as it spoke for the interests and classes from which the "wise men" were drawn, and, through them, for the nation. It, however, early gained the right to be consulted on all important affairs of both state and church, to share in the making of laws, to assent to treaties and land-grants, and likewise to elect or depose the king; for although kings were regularly chosen from a royal family, an eldest son was sometimes passed over in favor of another member deemed better qualified. Throughout the centuries, the English king has always acted in conjunction with some kind of council, or body of advisers, presumably able to place some limits on the exercise of arbitrary power. In Saxon days, this checking authority was the witan.

Aside from kingship and the relation of king and council, the most enduring of Anglo-Saxon political creations were certain<sup>2</sup>

1. King and witan

2. Local government

areas and authorities of local government, mainly, (1) the *tunsceip*, or township, with its *mote*, or town meeting, and its reeve and other elected officers, (2) the hundred, with a *mote* attended by persons from the townships, (3) the *burgh*, or borough, comprising a hamlet or town endowed with special rights of self-government, and notably (4) the shire, also with its *mote*, its alderman, and later its shire-reeve, or sheriff. Eventually, shires became counties, which in some instances survive almost intact to this day; and the sheriff is still numbered among the country's more conspicuous, if no longer highly important, local officials. Of main significance, however, as a contribution to later times was not so much jurisdictions and officials as a spirit of local independence or autonomy which centuries of relatively weak national government gave opportunity to develop—a spirit so sturdy that not all the centralizing pressure of Norman and Tudor periods, or of our own days of socialistic national consolidations, have succeeded in crushing it out.<sup>1</sup>

Norman-  
Angevin de-  
velopments

Saxon kings showed no marked genius for state-building, and in 1066 their feebly united realm was wrested from them by a conqueror from overseas, William of Normandy. This started a new era in the country's constitutional development.<sup>2</sup> Even on the smaller stage furnished by his Continental duchy, William had proved his claim to statesmanship; and in the new and larger field, his vigor, foresight, and resourcefulness achieved remarkable results. Confiscating the estates of the Saxon earls, he parcelled them out on a carefully guarded feudal basis among his trusted followers; without uprooting local institutions, he readjusted them so as to be compatible with a high degree of central control; the church was brought under effective supervision; and altogether the situation was so maneuvered as to make the king master of the land in a measure never attained by any Saxon monarch. For half a century after the Conqueror's death (1087), the new system ran effectively, even though the kings were of smaller caliber; and though a period of confusion under the unfortunate Stephen (1135-54) threatened to wreck the mechanism, the energetic and astute Henry II retrieved all that had been

<sup>1</sup> Fuller descriptions of Anglo-Saxon institutions will be found in G. B. Adams, *Constitutional History of England* (New York, 1921), 5-49, and A. B. White, *The Making of the English Constitution* (rev. ed., New York, 1925), 3-71.

<sup>2</sup> Some writers, e.g., G. B. Adams (*The Origin of the English Constitution*, 16), consider that the constitution really originated in the Norman-Angevin period.

lost and gained new ground besides. "Henry II," it has been remarked, "found a nation wearied out with the miseries of anarchy, and the nation found in Henry II a king with a passion for administration." In the course of a reign which covered a full generation (1154-89), the adroit Angevin curbed rebellious nobles and churchmen, turned locally elected sheriffs into royally appointed agents of the central government charged with enforcing law and collecting taxes in the shires (henceforth known as "counties"), developed a staff of royal judges who went up and down the country deciding cases on uniform principles that gave rise to the historic "common law," and in other ways toned up and consolidated the new political order instituted by his great-grandfather.

No king, however able and industrious, could manage so vast a piece of machinery single-handed. To aid in running the government and to help the monarch formulate his policies, two main agencies arose. One was the *Magnum Concilium*, or Great Council; the other was the *Curia Regis*, literally, the King's Court. The Council was, in a manner, the successor of the old witan; at all events, it was a gathering of principal men of the kingdom—bishops, officers of the royal household, tenants-in-chief, and others—meeting three or four times a year at the call of the king, and looked to by him to help decide policies of state, to review the work of administration, to sit as a high court of justice, and to bear a share in making and amending laws on the rather rare occasions when such action was required. Originally, the *Curia Regis* was not strictly a separate body, though in time it practically became such. The Council, as has been observed, did not meet often; moreover, it usually sat only a few days at a time. But there was business to be attended to pretty much all the while, and the very natural plan was hit upon of associating together for the purpose those members of the Council who as officers of the royal household—chamberlain, chancellor, constable, etc.,—were already following the king wherever he went and giving their time continuously to the business of state. This smaller, more or less professionalized, group—a sort of inner circle of the Council—constituted the *Curia*. No hard and fast rules governed the composition of either body. Still less was there any exact delimitation of jurisdictions. The king could refer matters to large council or "little

Great Council and *Curia Regis*

council," or to neither, precisely as he chose; and he was in no wise bound to be governed by advice received. Much significance, however, attaches to the fact that through all the ups and downs of the Norman-Angevin period strong and weak monarchs alike followed the practice of calling together the leading men of the realm, and of relying upon them not only for assistance in law-making and administration, but for information, opinions, and support.

Functional  
differentia-  
tion

One will not be surprised to learn that with the lapse of time Council and Curia grew farther apart, and that each made its own great contribution to the country's governmental system of later centuries. Take first the Curia. In the days of the Conqueror, that body is seen performing work of many different kinds, with apparently no thought of what we should call functional specialization. But this situation could not last. As the volume of business mounted, trained lawyers, expert financiers, and other men of special aptitudes were drawn in, and before long—even in the reign of Henry II—we see evidences of a tendency to split up the Curia's multifarious duties into segments and to develop a distinct branch or section to take charge of each. Nobody planned the thing out, as a modern efficiency and economy commission might do it. But by slow and hazardous stages judicial work was separated from the tasks of general administration; and while one portion of the Curia (known as the "permanent council," and later as the "privy council") went on as a council for general purposes, another became the parent of four great judicial organs, namely, the courts of (1) exchequer, (2) king's bench, (3) common pleas, and (4) chancery. Meanwhile, the superior aptitude of this expanding mechanism for handling administrative and judicial business left the Great Council with less and less to do in that domain. The Council did not, indeed, die out, or even lose its importance. Its development was merely turned in a different direction; and, considering the nature of its membership, one will be entirely prepared to recognize it, in its main outlines, in the later House of Lords. Manifestly, in twelfth- and thirteenth-century Council and Curia lay, in embryo, many important parts of the country's future constitutional system.

The Great  
Charter

The masterful manner in which Henry II handled affairs, combined with the essential justice of his rule, won for him a very

strong position; and if his successors had been men of like capacity, there might be a different story of English constitutional development to tell. Autocratic power, however, in the hands of weak or vicious kings—notably Richard I and John—provoked rebellion; and after the last-mentioned monarch had alienated most of his supporters, the strong men of the country took advantage of his predicament to place in his hands a lengthy list of reforms which he had no alternative but to grant. On June 15, 1215, in the plain of Runnymede, between London and Windsor, *Magna Carta*, the “Great Charter,” was agreed to on both sides. The document was not literally “signed”; John could not write his name, and few of his opponents were any more proficient. But the same purpose was served by affixing the great seal of the realm and the individual seals of the twenty-five barons who were delegated to see that the king’s promises were carried out.

Bishop Stubbs once said of the Charter that the whole of English constitutional history is merely one long commentary upon it, and writers and orators often refer to it as the most important political document in all English history, if not in the history of the world. To be sure, a good deal has been read into the instrument in later times that was not really there; it did not, for example, guarantee trial by jury, nor did it provide for anything in the nature of representative government. Wrested from the king, not by the “people” in any proper sense, but only by a single baronial class, it had little to say—at all events directly—about the rights and privileges of humbler folk. And, being intended primarily as an enumeration of rules and principles presumed to be already in operation, it contained little that was new. Nevertheless, its importance, if construed understandingly, can hardly be exaggerated. England was at a point where somebody had to decide for her whether she was to be a nation ruled according to law or only according to royal caprice—whether if the king proved unwilling to be guided by established principles, he could be compelled to do so or to give way to another of more tractable temper. The barons who pressed John to a surrender at Runnymede decided these momentous matters for the nation. They were, of course, not thinking of modern forms of constitutional limitations, and anything resembling modern democracy was quite beyond their ken. But by getting the sovereign’s solemn agreement to do certain things and not to do others, and

by setting over him a sort of baronial watch to see that he lived up to his contracts, they turned the country's steps once more away from absolutism and in the direction of constitutional government. Better means of holding the king in check were later found than a mere committee of twenty-five nobles. But for the present the principle was more important than the machinery. Of great significance it was, too, that in the Charter as agreed to, barons and clergy promised to extend to their own dependents the same "customs and franchises" that were guaranteed to themselves by their lord, the king. The rights of the church were freshly asserted; cities, boroughs, and villages were pledged their "ancient liberties"; property and trade were granted protection.

One will not be surprised to learn that as time went on the rights and liberties guaranteed to barons, clergy, and merchants were gradually extended to other classes of people, in so far as applicable; or that the Charter became a sort of touchstone and palladium of the nation's liberties to which Englishmen habitually harked back whenever they considered that the king was breaking over the bounds that agreement or custom had established for him. More than one monarch in later times found it expedient to issue specific "confirmations" of the historic contract; and such portions of the instrument as have any modern bearing—relatively few though they are—belong to the accepted law of the British constitution today.<sup>1</sup>

The rise of  
Parliament:

1. The first  
"parlia-  
ments"

Meanwhile a line of development was started which in the end not only gave the nation more effectual means of keeping monarchy under control, but supplied it with an instrumentality through which to govern itself. Hard pressed by both foreign and domestic difficulties, King John, in 1213, called upon every county to send to a meeting of the Great Council four "discreet knights" who should act for the landholding and other substantial elements in assenting to royal levies upon

<sup>1</sup> See p. 43 below. An English translation of the Charter will be found in G. B. Adams and H. M. Stephens, *Select Documents of English Constitutional History* (New York, 1906), 42-52. The principal work on the subject is W. S. McKechnie, *Magna Carta* (Glasgow, 1905). For fuller treatment of the Norman-Angevin period, see G. B. Adams, *Constitutional History*, 50-143; A. B. White, *op. cit.*, 72-452. Important special works include G. B. Adams, *Council and Courts in Anglo-Norman England* (New Haven, 1926), and W. A. Morris, *The Mediaeval English Sheriff* (Manchester, 1927).

their possessions. The expedient did not save the situation for John, but it had obvious utility, and later monarchs did not hesitate to avail themselves of it. When such a meeting was convoked by Henry III in 1254, king and barons fell to quarrelling, and eventually to fighting, with the result that in 1264 the barons were victorious at Lewes and their leader, the foreign-born Simon de Montfort, emerged as regent of the country. No less in need of funds than the king himself, Montfort thereupon convened a "parliament"<sup>1</sup> in 1265 which was attended not only by the barons, clergy, and two knights from each shire, but also by two burgesses from each of twenty-one boroughs, or towns, known to be friendly to the barons' cause. The gathering was only a partisan conclave, and to speak of its sponsor as the Father of the House of Commons is to give him rather more than his due. The inclusion of spokesmen from even a limited number of hand-picked towns was, however, a significant departure. Various other parliaments were held in the next thirty years, usually with no townsmen in attendance. But a meeting convoked by Edward I in 1295 brought together all elements considered capable of contributing to the king's necessities, and proved so similar to the gatherings of later centuries that it has ever since held a place in history as the "Model Parliament." Two archbishops, 18 bishops, 66 abbots, 3 heads of religious orders, 9 earls, 41 barons, 61 knights of the shire, and 172 citizens and burgesses from the cities and boroughs—upwards of 400 persons in all—were present.

From the close of the thirteenth century onwards, Parliament was an accepted feature of the governmental system. As the foregoing paragraph indicates, it did not spring into existence full-grown. It was never formally "established," but merely grew up, by nobody's planning in advance, and only for the reason that the kings found meetings of the kind a useful means of obtaining additional revenue and service. Certainly there was no popular demand for it. On the contrary, knights and burgesses took their places along with the magnates of the old Council only because the sovereign ordered them to do so, and knowing full well that all that he wanted of them was that they

<sup>1</sup> The term (from the French *parler*, "to speak") was for some time thenceforth applied indiscriminately to meetings of the Council whether or not attended by knights and burgesses.

saddle themselves and their fellows with new tax burdens. The day came when representation in Parliament was looked upon as a privilege, a benefit, and a source of power. But nobody so regarded it in the times of which we are speaking.

2. The representative principle

From the first, the knights and burgesses who attended the meetings were, in one way or another, "elected"; and to some extent this gave Parliament, even in its earliest days, the character of a representative body. The idea of representation was not peculiar to England; nor did it first appear in that country in connection with Parliament. The old view, however, that the elements of representative government came out of the forests of Germany, found lodgment and growth in Anglo-Saxon England, and passed over unbrokenly into the parliamentary institutions of the times of Edward I and after has been exploded, and it is now understood that, whatever momentary importance may be attached to such earlier practices as the occasional appearance of deputies in the *motus* of Anglo-Saxon hundreds and shires, the system of representation in Parliament was of mediaeval origin, and is to be accounted for entirely by the acts and motives of needy kings as previously explained.<sup>1</sup> Representative government, in any full and proper sense, existed neither in England nor anywhere else until well down in modern times. The foundation for it was, however, laid in England by the progressive association of elected county and borough members with the magnates of the Council. And this arrangement arose from no mysterious "Teutonic genius" for representative institutions, no inherent and irrepressible love of liberty and self-government, but solely because, at a relatively early date, the kings of England were strong enough to reach down to increasingly numerous and prosperous classes of the people and draw them into the orbit of royal taxation.

3. Development of the bicameral system

In 1295, and for some time afterwards, the three orders, or estates—barons, clergy, and commons—met separately; and it appeared that Parliament would permanently take the form of a tricameral, or three-house, assemblage. Had this occurred, the first two bodies mentioned—after the point was reached where all were expected to act on the same questions and pro-

<sup>1</sup> The evidence is presented in C. A. Beard, "The Teutonic Origins of Representative Government," *Amer. Polit. Sci. Rev.*, Feb., 1932. Cf. H. J. Ford, *Representative Government* (New York, 1924), Chaps. i-x.



posals—would always have been able to outvote the third, and England would have run into the same difficulties that a three-house Estates General produced in France. Happily, however, practical interests led to a different arrangement. On the one hand, the greater barons and more important clergy were drawn by community of interests into a single body. On the other, the lesser barons gravitated into an affiliation with the county freeholders and the burgesses, and the minor clergy, finding their more appropriate place in the convocations (ecclesiastical assemblages) of Canterbury and York, dropped out altogether. The upshot was two houses, and only two—one, the House of Lords, essentially perpetuating the Great Council of feudal times, and consisting of persons who attended in response to individual summons, and the other, the House of Commons, bringing together all members who, elected in counties and boroughs, attended in a representative capacity. There was no crystallized opinion that two houses were better than some other number, nor indeed any plan or intent in the matter at all. But in less than a hundred years after the Model Parliament the bicameral system was an accepted fact. Profoundly influencing the course of English history from that time forth, the system eventually spread to all parts of the world; and though, as we shall see, it nowadays is regarded less highly than formerly, it still prevails, in one form or another, in the great majority of countries.

Parliament today is a singularly powerful body; legally, indeed, it is omnipotent. But in the beginning it was far otherwise. When it met, the king, personally or through his chancellor, indicated what he wanted, and the estates—usually in complete silence—assented. Later, the houses made formal reply through designated spokesmen, yet rarely showed hesitation or objection. Gradually, however, the potentialities of the situation dawned on the various groups of members, not excluding the commoners. The king *needed* parliamentary grants and support; otherwise, Parliament would not have been brought into existence in the first place. And by slow stages the fact was capitalized by all of the elements participating. As might be expected, the first major advance was in the domain of finance. The Great Charter itself required of the king that in assessing “scutages,” and in levying any beyond the three commonly recog-

4. The growth of powers:

a. Finance

nized feudal "aids," he should seek the advice of the Great Council; and it was of the very essence of Parliament from the beginning that there should be some relation between taxation and representation. "No taxation without representation" did not at once become an accepted principle. But hardly had Parliament taken on its bicameral form before the formula appeared which in substance is used to this day in voting supplies to the crown, *i.e.*, "by the Commons with the advice and assent of the Lords Spiritual and Temporal"; and in 1407 Henry IV definitely pledged that thenceforth all money grants should be considered and approved by the Commons before being taken up by the Lords at all. Thus did that mighty lever, the power of the purse, pass into parliamentary hands; and thus was the so-called "lower" branch of all later legislatures put in the way of securing its well-known primacy in finance.

b. Legisla-  
tion

Likewise with legislation. Originally, Parliament was not a law-making body at all; such laws as were made still emanated from the king, with the assent of his councillors only. But, starting with a mere right of individual commoners to present petitions, the Commons as a body gained, first the right to submit collective "addresses to the throne," and later the right to take part in giving their requests the form of law. The costs of government and war compelled the king to turn with increasing frequency to Parliament for supplies; before supplies were forthcoming, he was apt to be called upon through petitions for a redress of stipulated grievances; and this usually eventuated in some kind of legislation, with the result that not only the taxing power, but law-making power as well, gradually passed into parliamentary hands. Late in the fourteenth century, laws were still being enacted by the king with the *assent* of the lords at the *request* of the commoners; and it often happened that the completed measure was something very different from the original request on which it was based. In 1414, Henry V granted that "from henceforth nothing be enacted to the petitions of his Commons that be contrary to their asking, whereby they should be bound without their assent." The rule was often violated; but late in the reign of Henry VI (1422-61), a change of procedure was brought about under which measures were thenceforth to be introduced in either house in the form of *drafted bills*. Statutes now began to be made "by the King's (or Queen's)

most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same"; and to this day every act of Parliament begins with these words unless passed under the terms of the Parliament Act of 1911, in which case mention of the Lords is omitted.<sup>1</sup> Once merely a modest petitioner for laws redressing grievances, the House of Commons, by the end of the fifteenth century, had become—legally at all events—a coördinate law-making assemblage.<sup>2</sup>

Then opened a stretch of two hundred years of English history during which the nation found its leading constitutional problem in the rivalry of king and Parliament for supreme control. Under a line of Tudor monarchs covering the period from 1485 to 1603, the advantage lay decidedly with the sovereign. The country had lately emerged from the dreary Wars of the Roses, and wanted peace. It knew that peace, and with it prosperity, could be had only through strong royal rule. And Henry VII, Henry VIII, and Elizabeth were statesmanlike enough to supply such rule while yet in the main disguising the fact that they were in reality autocrats. For Parliament, they found very real uses, though only, of course, to the extent that it could be made to do their bidding. When some great plan, like the separation from Rome under Henry VIII, was to be carried out, a parliament was called and the desired action embodied in a statute, which gave it the appearance of flowing from the will of the nation, and not simply that of the king. If it proved tractable, such a parliament was likely to be kept in existence for a number of years; if not, it was summarily dismissed. The list of boroughs invited to send representatives was from time to time juggled in the royal interest; elections were systematically manipulated by royal agents; commoners of independent mind were threatened, bullied, and otherwise coerced into the compliance expected of them. Parliament was all the while growing quietly in morale and in desire for power; in her later years, Elizabeth found it difficult enough to handle. Until the Tudor period was far advanced, however, the alterna-

Government  
under the  
Tudors

<sup>1</sup> See p. 219 below.

<sup>2</sup> The rise of Parliament is described more fully in G. B. Adams, *Constitutional History*, 160-215, and A. B. White, *op. cit.*, 337-452. The best general history is A. F. Pollard, *The Evolution of Parliament* (London, 1920).

The seven-  
teenth-cen-  
tury revolu-  
tion

tive to paternalistic royal rule still seemed to be, not parliamentary government, but baronial anarchy; and the people had no mind to live through that sort of thing again.

Then followed—beginning with James I in 1603—the line of Stuart kings, as sadly deficient in tact as the Tudors had been conspicuous for it; and with them came deadlock, civil war, and in the end a complete constitutional reorientation. James I, openly adhering to the doctrine of divine right, quarrelled with every parliament that he convened, and in particular gave offense by insisting upon “impositions,” *i.e.*, additional customs duties, by his own independent authority. His successor, Charles I, after an initial period of trouble, got on for eleven years without any parliament at all. But in 1640 his Scottish wars drove him to resort to the houses for funds; and the way was opened for controversies which in two short years plunged the country into armed conflict. At the outset, the parliamentary party had no intention of setting up a government by Parliament alone, in form or in fact; its only object was to compel the king to keep his promises and govern according to law. Military successes and attendant shifts of circumstance and opinion carried the victors along, however, on a tide of political experimentation such as the nation had never known and has not witnessed since. Defeated on the field of battle, Charles was executed in 1649; kingship and the House of Lords were abolished; the country was proclaimed a republic; a “commonwealth” government was set up; and in 1653 the first written constitution known to the modern world was put into operation.<sup>1</sup> For several years, Cromwell and the discordant forces of army and Parliament labored to keep the new ship of state from foundering. But, like revolutionists everywhere, they found it easier to destroy than to build; and in the end they were obliged to give up. Shrewder men, including Cromwell himself, had recognized from the start that matters had been carried too far, and after the hand of the Great Protector was removed from the

<sup>1</sup> The “Instrument of Government,” replaced in 1657 by another document known as the “Humble Petition and Advice.” For text of the former, see G. B. Adams and H. M. Stephens, *Select Documents*, 407-416. The above statement as to priority should perhaps be qualified by the observation that an “Agreement of the People,” drawn up by members of the army in 1647, partook strongly of the nature of a constitution, but was never in operation; also by mention of the fact that a series of eleven “orders” adopted by the Connecticut towns of Hartford, Wethersfield, and Windsor in 1639 had every essential characteristic of a constitution.

helm by death in 1658, a return to former arrangements was only a question of time. In 1660, the Stuart claimant, having given the guarantees demanded, returned from Continental exile and was received with general acclaim as Charles II.

The Stuarts were to have another chance; and the reigns of Charles II (1660-85) and his brother James II (1685-88) were essentially a time of experiment, the object being to find out, once for all, whether a member of that imperious line could, or would, keep within the bounds fixed by the vindicated national constitution. That Charles contrived for the most part to do so was due not alone to his somewhat indolent disposition but to a political insight which enabled him to perceive how far it was safe to go and what the consequences of transgression would be. James was of a different mold—headstrong and intolerant—and hardly was he on the throne before he grievously offended Parliament by seeking to set aside, or at least to suspend, laws that it had made, especially such as imposed disabilities upon Catholics. Foreseeing no likelihood that the monarch would mend his ways, a group of leading members took it upon themselves to invite the Stadtholder of Holland, William, Prince of Orange, husband of Mary, James' eldest daughter, to cross over to England and aid in upholding the constitutional liberties of the realm. The result was the "bloodless revolution" of 1688—bloodless because James found himself practically without support and fled the country. Early in the following year, a "convention parliament"<sup>1</sup> declared the last Stuart to have abdicated and established William and Mary on the throne as joint sovereigns.

The last of  
the Stuarts

With a view to consolidating the results of the Revolution and making evasion more difficult in the future, Parliament in 1689 drew up and adopted, in the form of a statute, one of the most significant documents in English constitutional history, *i.e.*, the Bill of Rights. Going straight to the heart of the situation, the new instrument told of the unlawful practices of the later Stuarts—somewhat after the staccato manner of the American Declaration of Independence later on—and forbade repetition of them as unequivocally as the English language could be made to do it. It branded as "illegal and pernicious" the "pretended" royal power of suspending or dispensing with

The Bill of  
Rights

<sup>1</sup> So-called because not summoned in the regular way by a king.

laws, the levying of imposts without Parliament's assent, the arbitrary erection of royal commissions and courts, the raising or keeping of a standing army in time of peace unless Parliament agreed. It affirmed the right of subjects to petition the king, the right of Protestant subjects to bear arms for their own defense, the right of members of Parliament to full liberty of speech and debate. It said that the election of members of Parliament ought to be "free," and that parliaments "ought to be held frequently." In short, it laid down definite constitutional rules and principles every one of which could be invoked instantly today if occasion should arise.<sup>1</sup> Even in the matter of succession to the throne, it imposed the limitation (still in effect) that no Catholic nor any person marrying a Catholic should be allowed to inherit.

What the Bill of Rights therefore did was to sum up, very concretely, the results of the Revolution and of the entire seventeenth-century liberal movement, and to put them in legal form so unmistakable that they could never again be misunderstood or challenged. The document, and the political overturn that lay behind it, marks the culmination of all the constitutional development that had gone before. Much has been added since; certainly English government is a very different affair today from what it was under William and Mary. But in a very true sense all that has come after has been merely by way of elaboration of the fundamentals sonorously restated in 1689. The sovereignty of the body politic, the supremacy of law, the legal omnipotence of Parliament—no one of these basic principles was ever again called in question by any persons or elements of sufficient strength to threaten the work that had been accomplished. Kingship went on, regarded, indeed, as a natural and useful institution. But thenceforth the royal tenure was not by inherent or absolute right; on the contrary, it was conditioned upon the consent of the nation as expressed through Parliament. For all practical purposes, divine right was dead.<sup>2</sup>

<sup>1</sup> A related measure is the Toleration Act of 1689, which provided "some ease to scrupulous consciences in the exercise of religion," i.e., a larger measure of liberty for Protestant Nonconformists. G. B. Adams and H. M. Stephens, *op. cit.*, 459-462.

<sup>2</sup> The constitutional history of the Tudor and Stuart periods is related at considerable length in G. B. Adams, *Constitutional History*, 249-361. Important works of a more special nature include J. N. Figgis, *The Theory of the Divine Right of Kings* (Cambridge, 1896); G. P. Gooch, *History of English Democratic Ideas in the Seven-*

Even though the events of 1688-89 put the stamp of finality on certain great principles of the constitution, many of the most notable features of the English governmental system as we behold it today have arisen within the two hundred forty-five years since that date—a period longer by a century than the entire history of the United States under the constitution of 1789. There is no need to dwell upon these later developments here, for all of them will come before us as our study of present-day machinery, functions, and processes proceeds. Bare mention of a number will, however, help to establish the fact, often overlooked, that constitutional growth has, on different lines, been just as important in later days as in earlier ones.

Constitutional development since 1689:

Notwithstanding the restrictions by which he was hedged about, the king was still, in 1689, near the center of the picture. He chose the ministers, influenced or controlled their decisions, acted on their advice or not as he liked, and bore a very real share in legislation. Parliamentary supremacy had indeed been established as a principle; but there were as yet no adequate means for making it effective in the day-to-day business of government. King and Parliament were left confronting each other, as of old, without the intermediation of any buffer or screen such as nowadays in the form of ministerial responsibility—shields them from all possibility of conflict. The eighteenth century saw this trouble-breeding situation entirely cleared up. William and Mary, and afterwards Anne, wielded powerful control over public acts and policies. But the early Georges, ascending the throne as foreigners and caring little for English affairs, permitted the prerogatives which their predecessors had guarded jealously—at all events, the actual exercise of them—to slip rapidly into hands eager to receive them, *i.e.*, those of the ministers and the houses of Parliament. George III (1760-1820), better acquainted with the country and glorying in the name of Englishman, tried hard, and with some suc-

1. Diminished powers of the monarch

*teenth Century* (rev. ed., Cambridge, 1927); T. C. Pease, *The Leveller Movement* (Washington, 1916); and C. H. Firth, *Oliver Cromwell* (New York, 1904). The text of the Bill of Rights is printed in G. B. Adams and H. M. Stephens, *op. cit.*, 462-469. The principles on which the parliamentary cause throughout the seventeenth century was based, and on which the Revolution of 1688-89 proceeded, were ably expounded and defended by John Locke in his famous *Two Treatises of Government*, published at London in 1690 (convenient edition by W. S. Carpenter, in Everyman's Library, London and New York, 1924).

cess, to regain what had been lost. But his successors fell back into the easier position of a king reigning but not ruling; and though the virtuous Victoria (1837-1901) had her own ideas about the rights of a monarch even under a cabinet system of government, her long reign left no room for doubt as to what the position of the sovereign in England was thenceforth to be. A satisfactory way of running the government with a minimum of personal participation by the monarch had been worked out, and no king or queen could have induced or compelled the nation to give it up. Any further attempt at rulership would probably have meant the end of monarchy itself.

2. Rise of the  
cabinet sys-  
tem

As the king receded into the background, the center of the stage was taken by the ministers—in particular, those of them who, as a group, came to be known as the cabinet. The cabinet grew into being slowly, and the *cabinet system*, with all that it at present involves, still more so; and to this day both rest entirely upon usage and not upon law.<sup>1</sup> Finding it difficult to procure the kind of assistance that he needed from an overgrown and unwieldy privy council,<sup>2</sup> Charles II, in 1667, drew about himself for advisory purposes a little group of trusted members who, from the initial letters of their names, soon gained the collective sobriquet of the “cabal.”<sup>3</sup> Less favored councillors not admitted to the charmed circle naturally objected, and for a time the plan had to be given up. Presently revived, however, it established good precedent for close working relations between the king and a small select group of competent advisers; and it only remained for the group to be made to embrace all of the principal ministers to transform it into what we know as the cabinet.

This step may be associated with the years of William and Mary. Not only did the chief ministers then emerge as a body meeting with and advising the sovereign, with the privy council pushed far into the background, but experience showed that for the sake of harmony and efficiency it was necessary that the ministers at any given time be selected entirely from the

<sup>1</sup> At all events, the only legal recognition that such a thing as the cabinet exists is the salary provided in the yearly estimates of expenditures for a cabinet secretary (see p. 111 below).

<sup>2</sup> The lineage of this body was traceable back through a so-called “permanent council” to the *Curia Regis* of Norman-Angevin times.

<sup>3</sup> Clifford, Ashley, Buckingham, Arlington, and Lauderdale.



political party commanding a majority in the House of Commons. To be sure, no one quite understood what was going on; and Parliament even sought to interpose obstacles which, but for early reconsideration, would have strangled the cabinet system in its infancy.<sup>1</sup> The need for some mechanism, however, through which the houses could vindicate their new-won supremacy and effectively control the acts of the crown found its only possible fulfillment in an arrangement under which ministers, themselves sitting in Parliament, were not only charged with the performance of those acts but held directly responsible for them; which is but another way of saying that the cabinet system was the logical and necessary fulfillment of the great constitutional settlement of the seventeenth century. Time was required to ripen the plan. For a good while, ministers were not always seated in Parliament, and recognized no definite obligation to give way when they failed of support in the popular branch. The system as we know it today hardly existed before the early nineteenth century; and it was never frankly described in print until Walter Bagehot published his famous *English Constitution* in 1867.<sup>2</sup> The inactivity of the early Georges, however, helped greatly to set the stage for the development; and when, in 1742, Robert Walpole—the first Englishman who can properly be called prime minister—promptly and as a matter of course tendered his resignation solely because of defeat suffered in the House of Commons, the central principle of the system might have been regarded as definitely established.<sup>3</sup>

The king's personal power would hardly have fallen off so markedly, and the cabinet system as we know it would certainly never have arisen, had not Parliament also undergone some very important changes. Chief among these were: (1) the conver-

3. Democratization of the House of Commons

<sup>1</sup> For example, the Act of Settlement (1701) definitely undertook to keep business in the hands of the privy council as such, and even to make it impossible for anyone holding a place of profit under the crown to sit in the House of Commons (see p. 91 below). Legislation of 1705 and 1707, however, reopened the way for ministers to be at the same time parliamentarians; and the effort to keep the council's work from slipping into the hands of the developing cabinet was gradually given up.

<sup>2</sup> See p. 51, note 1, below.

<sup>3</sup> On the rise of the cabinet, see, in addition to the general histories, G. B. Adams, *Constitutional History*, Chaps. xv–xvi; M. T. Blauvelt, *Development of Cabinet Government in England* (New York, 1902), Chaps. i–viii; E. R. Turner, "The Development of the Cabinet, 1688–1760," *Amer. Hist. Rev.*, July and Oct., 1913, and "The Cabinet in the Eighteenth Century," *Eng. Hist. Rev.*, Apr., 1917.

sion of the House of Commons into a body with deep popular rootage, and therefore with more valid claim to speak for the nation as a whole, and (2) the gradual shift from House of Lords to House of Commons of the center of gravity of legislative and other power. From its earliest days, the House of Commons had consisted principally of men who could hardly be regarded as spokesmen of the general mass of the people. County members were chosen by rural gentry whose lands had a rental value of at least forty shillings a year; borough members more variously, but usually by a mere handful of the borough residents. Many seats fell under the control of great landlords or other magnates; many were openly bought and sold. As late as the opening of the nineteenth century, the House of Commons was hardly less aristocratic in temper, and hardly more representative of the nation in any proper sense, than was the House of Lords; and until 1832 it was, on the whole, growing less representative rather than more so. Rising discontent, however, gradually brought the country to a new line of policy, and, beginning at the date mentioned, a long series of hard-won statutes extended the suffrage to successive groups of people who had been politically powerless, reapportioned parliamentary seats so as to distribute political influence among the voters with greater fairness, and regulated the conditions under which campaigns were to be carried on, elections held, and other operations of popular government performed. Culminating in the epochal Representation of the People Act of 1918, enfranchising upwards of twelve million men and women, and a supplementary "equal franchise" law of 1928 adding five million more, these measures brought the House of Commons to a point where it can easily be numbered among the most democratic parliamentary bodies in the world.<sup>1</sup>

4. Curtailment of the powers of the House of Lords

For some time after the Revolution of 1688, the House of Lords not only had more prestige but was considerably more powerful than the House of Commons. The future, however, lay with the latter body. Aided by its primacy in financial legislation, the elective branch made long strides in the eighteenth and nineteenth centuries, while the other house, undergoing no popularizing changes calculated to keep it abreast of the rest of the government, fell into a decidedly minor rôle. As long as

<sup>1</sup> See pp. 179-184 below

the upper chamber meekly accepted such a fate, passing finance measures unfailingly as they came to it from the House of Commons and rarely blocking general legislation of major importance, neither its legal parity of power nor its anachronistic membership caused any great amount of trouble. When, however, in the early years of the present century it began to show a more vigorous and independent attitude, even going so far as to refuse in 1909 to pass the annual revenue bill, a critical situation was produced, whose outcome was the Parliament Act of 1911, sharply curtailing the Lords' powers and bringing to an end the historic parity of the houses.<sup>1</sup> Thenceforth all money bills could be made law with little delay by action of the popular branch alone, and likewise bills of other kinds by a slower, but entirely feasible, process. With nine-tenths of its members still sitting by hereditary right, the House of Lords has become—like upper houses in most Continental countries—not only a second, but also a secondary, chamber. It can check and revise; and it retains important judicial functions. But as a legislative body it is only a shadow of its former self. The Labor party would like to see it abolished altogether.

Representative government, with a wide electorate, invariably gives rise to political parties as agencies through which people who think more or less alike on major public questions strive to obtain control of offices and legislatures and to see that the principles and policies in which they believe are carried into effect. As the country in which representative government first arose, England naturally was the first to have political parties in any proper sense of the term—just as it is doubtless the country today in which party counts for more in the actual working of the political system than in any other.<sup>2</sup> True political parties hardly existed, however, even in England before the early eighteenth century. Cavaliers and Roundheads of Cromwellian days, Court and Country under Charles II, Petitioners and Abhorrrers who divided on the exclusion of the last Stuart from the throne—these were only factions, mutually regarding each other as enemies of the state and bent upon crushing each other out of existence. Speaking accurately, parties exist only when

5. The growth of political parties

<sup>1</sup> See p. 219 below.

<sup>2</sup> Save, of course, Russia, Italy, and Germany, where, under varying circumstances, but one party is permitted to exist, with machinery that is inextricably interlocked with that of the government. China is in a somewhat similar position.

the people are divided into two or more groups or followings, each with its leaders, principles, and programs, but each prepared to concede that the others are quite as much entitled to exist as is itself and equally capable of being entrusted with the running of the government without bringing down the whole political structure in ruins. Whigs and Tories of later Stuart years started as hardly more than factions. Developing clear-cut principles and unified leadership, they, however, gradually adopted the mutually tolerant attitude characteristic of orderly parties in a peaceful society, and one will make no mistake by regarding them as the earliest of English parties. While they still held the field, the minority in Parliament, as a recent writer reminds us, ceased to be thought of as the king's enemies and became officially "His Majesty's loyal opposition."<sup>1</sup> During the eighteenth and nineteenth centuries, the party system ripened simultaneously with the cabinet system, and a very close relation existed between the two developments. It was not merely because most of the great issues of the formative period were of a nature to divide men into two, and only two, camps, but also because growing cabinet government inevitably tended to integrate all political elements into the "ins" and the "outs," that England became so definitely a bi-party country. Of late, bi-partyism has been in eclipse. Whether it will revive remains to be disclosed. But in any event, party alignments, processes, and procedures will continue to be among the influences most profoundly affecting the theory and practice of the English political system.<sup>2</sup>

#### 6. Other developments

Many other great changes have taken place since the last Stuart "withdrew himself out of the country" and William and Mary were placed upon the throne. Scotland was drawn into a parliamentary union with England and Wales in 1707. Ireland was similarly linked up in 1801, although the creation of the Free State in 1921-22 left only six northern counties with

<sup>1</sup> W. B. Munro, *The Governments of Europe* (rev. ed.), 36. In recognition of not only the loyalty but the constitutional utility of the opposition, Canada now goes so far as to pay the opposition leader in the House of Commons a salary out of the public treasury.

<sup>2</sup> Cf. Chaps. XVI-XVII below. On the rise of political parties, see especially W. C. Abbott, "The Origin of English Political Parties," *Amer. Hist. Rev.*, July, 1919; M. H. Woods, *A History of the Tory Party in the Seventeenth and Eighteenth Centuries* (London, 1924), Chaps. i-x; and K. G. Feiling, *A History of the Tory Party, 1640-1714* (Oxford, 1924).

a connection in any wise resembling that of previous days. A colonial empire, already started in America and India by 1689, developed into a far-flung mechanism which has necessitated numerous additions to the English political structure, even though without swaying it from its accustomed foundations. Local government was reorganized and democratized between 1835 and 1894. The judicial system was overhauled during the seventies of the same century. The civil service was profoundly altered in spirit and method after 1870. Above all, the functions and activities of government have multiplied unceasingly, entailing the creation of all manner of new machinery—executive departments, councils, boards, committees, and what not—and leading not only to new and staggering costs, but to problems of policy and procedure which test the ablest statesmanship of the time. We are accustomed to think of the English constitution as practically made by the end of the seventeenth century. Future generations may regard as one of its great formative periods the very days in which we ourselves are living.

## CHAPTER III

### THE CONSTITUTION AND GOVERNMENT TODAY

Meanings of  
the term  
"constitution"

From the political and legal experience of many hundreds of years has flowed the rich array of rules, principles, and usages forming what is known as the English—or more accurately today, the British—constitution; and our first concern as students of the most widely influential of modern governments must be to see what kind of a groundwork it is that has thus been laid. The term "constitution," one notes at the outset, is not always used in the same sense, even in strictly political connections. Sometimes it is employed narrowly to denote a written fundamental law which outlines the structure of a governmental system, defines the powers of legislatures and officers and courts, enumerates and guarantees private rights, and lays down more or less extensive and detailed principles and procedures to be observed in managing the affairs of state. Such a document may have been drawn up by a convention and approved by popular vote; it may be the handiwork of a legislature; or it may have been prepared and promulgated by a ruling prince or dictator. Quite as often, however, in these later and more discerning days, one finds the word used more broadly to include, not merely such a documentary instrument of government, but also the entire equipment of laws, principles, usages, and precedents—many of them not committed to writing at all—which give form and character to a governmental system as a going concern. One use of the term is as correct as the other; but it goes without saying that a speaker or writer ought always, when employing the word, to make clear which of the two meanings he intends to be attached to it.

Nature of the  
constitution  
of the United  
States

Questioned as to what is the constitution of the United States, the average person would be very likely to point to the frame of government drawn up at Philadelphia in 1787, put into operation in 1789, modified and expanded by twenty-one amendments, and printed as an appendix in almost every text-book on American government. And he would be right. *There is a constitution*

of the United States, even if it can no longer be read in quite the twenty minutes that Lord Bryce once allotted to it. But nothing would be wider of the mark than to suppose that one could get an adequate understanding of the American system of government merely by pondering a ten-page document printed in a book. From such a study he would never learn that presidential electors are pledged in advance to vote for certain candidates and no others, that the Senate can and does originate revenue bills, that there is such a thing as a congressional caucus or a political party or a national bank—or scores of other things of major importance about our actual working governmental system. The truth is that our written constitution—*any* written constitution that has been in operation even a few years—has come to be overlaid with, or enveloped by, a mass of rules and usages, not set forth at all in the basic text, yet contributing in many instances quite as much to making the government what it is as anything within the four corners of the formal document. Some of these added features arise from interpretation, supported by judicial opinion. Many rest upon statute. Still others flow only from precedent or custom. But the result is that the constitution of the United States comes to be, in a very true sense, the whole body of rules and practices by which the structure and powers of government, the interrelations of parts, and the ways of doing things are determined, irrespective of whether these rules and procedures are written or unwritten, and therefore of whether or not they are to be found in the “constitution” printed in the books.

What would an Englishman say if asked to produce the constitution of *his* country? That would probably depend on the degree of politeness with which he sought to conceal his amusement at the naïveté of the request. He could, of course, bring forward some documents—many of them, in fact—which embody fundamental laws unquestionably forming parts of the national constitution. We have already mentioned certain ones, *e.g.*, the Bill of Rights and the Act of Settlement. But he would hasten to explain that no one of these, nor all of them together, should for a moment be thought of as composing *the constitution*—that they are only pieces or parts of it, merely scattered stones in the mosaic. At no time (since Cromwellian days, at all events), he might go on to point out, has any attempt been made to

Nature of the  
English con-  
stitution

correlate and consolidate the country's fundamental, *i.e.*, constitutional, laws in a single document. More than that, a very great part of the rules and principles according to which the government is carried on today have never been reduced to writing at all—certainly have never been formally adopted or enacted. There is a British constitution—the oldest and most influential of all constitutions of our time. But it exists only in the second, or broader, of the two senses of the term explained above. "The child of wisdom and of chance" (as Mr. Strachey has called it in his *Queen Victoria*), the constitution is an amalgam of rules and principles which one could hope to bring together only by exhaustively surveying a thousand years and more of history, by laying hold of a statute here and a judicial decision there, by taking constant account of the hardening of political practices into established customs, and by probing to their inmost recesses the mechanisms of law-making, administration, public finance, justice, and elections, as they have been in the past, and as they actually operate before the spectator's eyes. By no such process of growth could anything approaching symmetry and logic have been attained; and truly enough, as Sir William Anson remarks, the constitution presents the aspect of a "rambling structure." Like all English law, its life has been, not logic, but experience.

Elements of  
which the  
constitution  
is composed:

#### 1. Law

One who undertakes by process of dissection to discover the essential elements of which the constitution is composed will find them falling into two great categories or groups: (1) the "law of the constitution," and (2) the conventions or customs. Contrary to an assumption sometimes encountered, the distinction is not that between written and unwritten parts of the constitution; for, as will be explained, there is a good deal of constitutional law which has never been reduced to written form. The law of the constitution is, rather, those parts of it which the courts will recognize and enforce; the conventions, those parts which, even though in practice no less real and effective than the law, are not enforceable through the courts—or, if they should prove so, would forthwith cease to be conventions and become parts of the law. Viewed more closely, the law, in turn, is found to contain four principal elements or factors. First, there are certain historic documents embodying solemn agreements, or engagements, entered into at times of political stress



or crisis. Of such nature are the Great Charter (those portions of it, at all events, which remain applicable in our day), the Petition of Right, and the Bill of Rights.<sup>1</sup> Second, there are parliamentary statutes defining the powers of the crown, guaranteeing private rights, regulating the suffrage, establishing courts, and creating other governmental machinery—obvious examples being the Habeas Corpus Act of 1679, the Act of Settlement of 1701, the Septennial Act of 1716, the Reform Acts of 1832, 1867, and 1884, the Municipal Corporations Act of 1835, the Parliamentary and Municipal Elections Act of 1872, the Judicature Acts of 1873-76, the Local Government Acts of 1888, 1894, and 1929, the Parliament Act of 1911, the Representation of the People Act of 1918, and the Government of Ireland Act of 1922. Third, there are judicial decisions fixing the meanings and limits of charters and statutes, very much as do judicial decisions in the United States, with the important difference that in England, as we shall see, no act of the national legislature is ever pronounced “unconstitutional.”<sup>2</sup> Fourth, there are principles and rules of common law—many of them—pertaining to functions, powers, methods, and relationships of government.<sup>3</sup> These principles and rules grew up entirely on the basis of usage and were never enacted by Parliament or otherwise declared at any given time to be law. Nevertheless they embrace some of the most fundamental features of the governmental and legal system and are fully accepted and enforced as law. The prerogative of the crown, for example, rests almost entirely on common law; likewise the right of trial by jury in criminal cases and the right of freedom of speech and of assembly. The first three elements enumerated, i.e., fundamental political engagements, statutes, and judicial decisions, exist solely, or almost so, in written form; and it may be added that as constitutional questions more and more find settlement in statutes and court decisions, the constitution tends to take on written form in ever increasing degree. The rules of the common law, public as well as private, however, have never been reduced to writing except in so far as they find mention in reports, legal opinions, and of course judicial decisions.

<sup>1</sup> The Bill of Rights was, to be sure, cast in the form of a statute, and hence might be included under the category next mentioned.

<sup>2</sup> A convenient collection of such decisions is D. L. Keir and F. H. Lawson, *Cases in Constitutional Law* (Oxford, 1928).

<sup>3</sup> See pp. 362-366 below.

Finally, there are those portions of the constitution which we have been taught by Professor Dicey to call "the conventions."<sup>1</sup> The "law" of the constitution, composed of the four elements that have been enumerated, is law in the strictest sense and, whether written or unwritten, is, as we have said, enforceable through the courts. It is, for example, a law that the crown may not dispense with the obligation to obey an act of Parliament, and if a court were called upon to deal with a case involving an attempted dispensation of the sort, it would see that the law was applied and carried out. The conventions, on the other hand, although they may, and frequently do, relate to matters of the utmost importance, are not thus enforceable. They consist of understandings, habits, or practices which by their sole authority regulate a large proportion of the actual day-to-day relations and activities of even the most important of the public authorities. Most of them will be found described in text-books and treatises. But they do not appear in the statute-books or in any statement of the law, written or unwritten—rightly enough, because, although parts of the constitution, they are not law. It is, for example, by virtue of conventions of the constitution (not laws) that Parliament is convoked at least once every year, that it is organized in two houses, that the leader of the party having a majority in the House of Commons (if there be such) is prime minister, and that a ministry which has lost the confidence of the House of Commons must retire from office unless it appeals to the country at a general election and wins a parliamentary majority. The cabinet and all that the cabinet, as such, stands for, rests entirely upon convention. Of course, as has been suggested above, usage or convention plays a very large part in all political systems, and assumes indeed a major rôle in all constitutions (in the broader sense) which have had time to mature. Certainly it is so in the United States, where, indeed, convention forms, in the opinion of Professor Dicey, quite as large a part of the actual working constitution as in England.<sup>2</sup> After all, however, England is the classic land of

<sup>1</sup> *Introduction to the Study of the Law of the Constitution* (8th ed., London, 1915).

<sup>2</sup> *The Law of the Constitution* (8th ed.), 28, note. On the conventions of the American constitution, see J. Bryce, *The American Commonwealth* (3rd ed.), I, Chaps. xxxiv-xxxv, and H. W. Horwill, *The Usages of the American Constitution* (London, 1925). It is interesting to note that both of these discussions of the subject are by English authors.

convention, partly, no doubt, because there it has had more time than anywhere else in which to develop, partly because of a national temper which is peculiarly favorable to that sort of thing. It goes without saying that anyone seeking to know the British constitution as it is must study the conventions quite as carefully as the positive rules of law.

What is it that gives the conventions force? They are not law, but only a species of constitutional "morality." No court can be invoked to give them effect, and yet the government would become something very different from the thing it is—indeed could hardly go on at all—if they were not observed. What is the sanction, as the lawyers would say, behind them?

At the outset, it should be observed that the recognized conventions or usages are not, as a matter of fact, equally inviolable. All are of the essence of custom, and it goes without saying that some customs are regarded as more important than others, and that some are more, some less, accepted and entrenched. On all hands, customs are on the road to becoming established conventions. Some, however, are deflected and never arrive at the goal. Furthermore, a practice which is believed to have established itself so securely that it will never be departed from may, after all, some day be disregarded. Times and ideas change; new necessities arise; forces that shape the actual character of the government wax and wane. Whether a particular custom is to be considered as having definitely taken its place as a part of the constitution is often a matter of sheer guess-work. How long it will maintain itself in a system which changes as subtly and insensibly as the clouds is often equally a matter of doubt. All of which is tantamount to saying that anyone attempting to stake out the exact boundaries of the English constitution, conventional as well as legal, will indeed have a difficult task.

But there are many great maxims which are never violated, and are universally admitted to be inviolable. What is it that gives these their binding character? It is not easy to answer the question to one's entire satisfaction, but two or three considerations help to an understanding of the matter. The first of these is that many of the most important conventions are so bound up with the laws that they cannot be violated without infraction of law itself, or at any rate without entailing other grave consequences. Mr. Dicey found in this the conventions'

Why the conventions are observed

Considerations of practical necessity

principal sanction. The illustration which he was fond of using was the maxim that Parliament shall assemble at least once a year. Suppose, he said, that Parliament should be prorogued in such a manner that a full year were to elapse without a meeting. The annual Army Act would expire and the government would lose all disciplinary authority over the troops. Furthermore, although most of the revenue is collected and some of it is spent without annual authorization, certain taxes would lapse and there would be no authority to pay out a penny on the army, the navy, or the civil service. An annual meeting of Parliament, although only a custom which no court would attempt to enforce, is therefore a practical necessity; without it, public officials would find themselves performing illegal acts—or the wheels of government would simply stop. The violation of various other conventions would lead to equally bad consequences.<sup>1</sup>

Other and  
weightier  
reasons:

This is, indeed, a weighty argument. It does not, however, quite cover the case. For, as Lowell suggests, England is not obliged to continue forever holding annual sessions of Parliament because a new mutiny act must be passed and new appropriations made every twelve months; Parliament, with its plenitude of power, could as well as not pass a permanent army act, grant the existing annual taxes for a term of years, and charge all ordinary expenses on the Consolidated Fund, from which many charges already are paid without annual authorization.<sup>2</sup> The conventions are supported by something more than merely the realization that to violate them might mean to collide with the law; the law itself could be changed. For this additional sanction we must look mainly to the power of tradition, perhaps better, the force of public opinion. "In the main," says Lowell, "the conventions are observed because they are a code of honor. They are, as it were, the rules of the game, and the single class in the community which has hitherto had the conduct of English public life almost entirely in its own hands is the very class that is peculiarly sensitive to obligation of this kind. Moreover, the very fact that one class rules, by the sufferance of the whole nation, as trustees for the public, makes that class exceedingly careful not to violate the understandings on which the trust is

<sup>1</sup> *Law of the Constitution* (8th ed.), 441-450.

<sup>2</sup> *Government of England*, I, 12. Cf. p. 119 below.

held." <sup>1</sup> The nation expects, and has a right to expect, that Parliament will be convened annually, and that a ministry that cannot obtain majority support in the House of Commons will resign. The outburst of feeling that would follow if these expectations were not met is a very good guarantee that they will be met. There are other guarantees, but this is certainly one of the number. With the broadening of the popular basis of government in later times, to some extent breaking the monopoly which the aristocracy of birth and education formerly enjoyed in managing the nation's affairs, the effectiveness of tradition and opinion might conceivably decline; and some apprehension has been felt lest, in the new era which Britain has entered, the conventions will be less scrupulously upheld than they have been in the past. Two different periods of Labor government (1924 and 1929-31), however, furnished little evidence of any tendency of the sort; and one may believe that even a Labor government more securely entrenched in power than were those of Mr. MacDonald would hold pretty well to the accustomed lines. Plenty of trouble would arise from failure to do so. Besides, Labor men are, after all, Britishers.

Enough has been said about the origins and content of the British constitution to establish the fact that, while deeply rooted in the past, it is nevertheless a living organism, changing all of the time before our very eyes. How it grows, and wherein its mode of development resembles or differs from that of other constitutions, is an interesting matter to consider. In the first place, speaking broadly, it does not move forward by a succession of sudden leaps after the manner of the constitution of France since 1789, or even that of Germany or other states which, as a result of wars or revolutions, have swung abruptly from one form of polity to another. On the contrary, transitions have as a rule been so gradual, deference to tradition so habitual, and the disposition to cling to accustomed names and forms, even when the spirit has changed, so deep-seated, that the constitutional history of Britain displays a continuity hardly paralleled in any other land. At no time, as Freeman wrote, "has the tie between the present and the past been rent asunder; at no moment have Englishmen sat down to put together a wholly new

How the constitution grows

<sup>1</sup> *Ibid.*, I, 12-13.

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How the constitution grows

<sup>1</sup> *Ibid.*, I, 12-13.

constitution in obedience to some dazzling theory." <sup>1</sup> Even when, as in the seventeenth century, war and revolution seemed to precipitate both sudden and fundamental change, closer examination reveals that what was really happening was only the winning of full and lasting triumph for principles and usages that had long been growing up. Even in his revolutions, as one writer has put it, the Englishman is conservative.

Contrasts of  
theory and  
practice

So far does this characteristic prevail that some curious things result. Practice quite outruns theory, and there come to be, in a sense, two constitutions rather than one—the constitution that represents the system as it is supposed to be and the constitution that represents it as it actually is. Take, for example, a matter to be dealt with more fully later, *i.e.*, the relation between the crown and Parliament. Seven or eight centuries ago, England was, to all intents and purposes, an absolute monarchy. For many generations past she has now, however, been not only a limited monarchy, but (in the phrase of Mr. and Mrs. Webb) a "crowned republic," with one of the most democratic systems of government in the world. As great a change has come over her actual political character as can readily be conceived. Nevertheless, the theory has never been discarded that the government is the king's and not the people's. The law is the king's law; justice is the king's, and is dispensed by the king's judges; the ministers and all their subordinates are "servants of the crown"; no parliamentary election can be held except by the king's writs, no parliamentary statute is enforceable without the king's assent, no civil or military officer is capable of being appointed except in the king's name. The fleets form His Majesty's navy; government documents are published by His Majesty's stationery office; the people are His Majesty's "loyal subjects." All this, of course, is sheer legal theory, separated from the actualities as one pole from its opposite. The simple truth is that Parliament enacts new laws, makes and unmakes ministries, controls the army and the navy, levies taxes and appropriates money; and that, with few (though important) exceptions, where the king acts at all, he acts only through his ministers. The wary student will not be misled; but in threading his way through the glacial drift of history he has to be constantly on his guard. There are plenty of contrasts of theory and fact in all governments. But in none

<sup>1</sup> *The Growth of the English Constitution*, 19.



do they form the very warp and woof of the system as in the British.

What are the ways in which the actual, working constitution progressively adapts itself to changing ideas and needs? Sometimes war and revolution have played a part. But for upwards of three hundred years, no resort to violence has proved necessary.<sup>1</sup> Sometimes conditions of special national stress, *e.g.*, during the World War and succeeding years, precipitate feverish innovation and experiment.<sup>2</sup> But other long periods are marked by only slow and placid growth. From what has already been said about the elements of which the constitution is composed, the answer to the query can readily be inferred. Judicial decisions contribute something. But, in the main, the instrumentalities of change are two—custom and legislation. Of the former, enough has been said to impress the fact that the growth of conventions is not something merely historical, a chapter that is closed, but a continuing process still actively building constitutional principles and rules. Statute as a mode of constitutional growth requires, however, a word of comment—the more by reason of the fact that nowadays it is considerably the most important of all. It involves, of course, constitutional amendment by act of Parliament.

Modes of  
constitu-  
tional change

It will strike the American student as strange that Parliament can amend the constitution at all. For in this country we have proceeded on the theory that constitution-making and amending powers should be kept distinct from the powers of ordinary law-making and entrusted to different hands. Our national Congress may, indeed, propose constitutional amendments, by a two-thirds vote in both houses; but no amendment can become effective until it has been ratified by the legislatures of three-fourths of the states.<sup>3</sup> In France, a constitutional amendment can be adopted only by the senators and deputies sitting together in National Assembly, not by the two houses of Parliament de-

<sup>1</sup> A possible exception might be the events which led up to the creation of the Irish Free State in 1922. See Chap. XX below.

<sup>2</sup> How unusual events such as the establishment of the tri-party "national" government of Ramsay MacDonald in 1931 test the stability of the constitution is brought out in H. J. Laski, *The Crisis and the Constitution* (London, 1932).

<sup>3</sup> An alternative mode of ratification—by conventions acting favorably in three-fourths of the states—was employed for the first time in connection with the Twenty-first Amendment, adopted in 1933.

liberating separately as upon statutes; and in many other countries special devices or processes, of one kind or another, are required to be brought into play before the fundamental law can be changed

De Tocqueville's doubts

Great Britain, however, knows nothing of such distinctions. There, the unlimited legal power which Parliament possesses to enact ordinary statutes is matched only by its power to enact measures adding to or otherwise modifying the constitution. No departures from the usual organization and procedure are required, and there are no legal limits whatever to the changes that may be provided for. "Our Parliament," observes Anson, "can make laws protecting wild birds or shell-fish, and with the same procedure could break the connections of Church and State, or give political power to two millions of citizens, and redistribute it among new constituencies."<sup>1</sup> Parliament has, of course, actually done some of these last-mentioned things, and more; and it might as well have been added that it could depose the king, abolish the monarchy, deprive all peers of seats in the House of Lords, or suppress that chamber altogether, or, in fact, do any one or all of a score of other things that would make the British scheme of government unrecognizable by those who know it best. This extraordinary fact led Alexis de Tocqueville, a hundred years ago, to aver that there is no such thing as an English constitution at all.<sup>2</sup> As a Frenchman, he was accustomed, as is an American, to think of a constitution as a document or related group of documents, not only promulgated at a given time and setting forth in logical array the framework and principles of a scheme of government, but subject to amendment, not at the hand of the government itself, but only by the same ultimate agency—distinct from and superior to the government—which made the instrument in the first place. He could discern nothing of this nature in England; on the contrary, every feature of the governmental and legal system there was open to change at any time, to any extent, by simple action of the government—really only one branch of the government at that, *i.e.*, Parliament. Hence it seemed to him that there was nothing in England really worthy of being considered a constitution.

<sup>1</sup> *Law and Custom of the Constitution* (5th ed.), I, 380.

<sup>2</sup> *Oeuvres Complètes*, I, 166–167.

De Tocqueville would not have been so far wrong, save for one important consideration, namely, that legal power to amend and actual, usable power to do so are two very different things. It does not follow that merely because kingship and jury trial and private property and the suffrage are legally at the mercy of Parliament, they are in danger of being swept away. Parliament, after all, is composed of men who, with few exceptions, are respected members of a well-ordered society, endowed with sense, and alive to their responsibility for safeguarding the country's political heritage. They live and work under the restraint of powerful traditions and will no more run riot with the constitution than if it were weighted down with guarantees designed to keep it out of their control. Legally, the constitution is undeniably the most flexible on earth, but actually it is decidedly less fluid than might be inferred from what the writers say. History shows that few systems of government are more grudgingly and conservatively reconstructed by deliberate legislative act. Considered practically, the flexibility of a constitution depends far less upon the procedure required for amendment than upon the political temperament of the people.<sup>1</sup>

Actual limitations on Parliament's power

<sup>1</sup> A constitutional question of the first magnitude may come to a head at a time when a new House of Commons has not been elected in three or four years; and even if there has been an election within less time than that, the matter at issue may not have been prominently before the voters. It has often been argued that under these circumstances Parliament ought not to proceed with an amendment until after the people have had a chance to express themselves upon it at a general election. The principle of the referendum, as thus proposed, has not, however, won common acceptance, and Parliament still acts with entire freedom—as is illustrated by the enfranchisement of eight and one-half million women in 1918 by a parliament elected eight years previously, and by the creation of the Irish Free State in 1922 under a plan never submitted to the electorate.

Among the best brief discussions of the British constitution are A. L. Lowell, *Government of England*, I, 1-15; W. R. Anson, *Law and Custom of the Constitution* (5th ed.), I, 1-13; and S. Low, *The Governance of England* (new ed.), 1-14. A more extended analysis is A. V. Dicey, *Introduction to the Study of the Law of the Constitution* (8th ed.), already cited. A highly interesting and significant work on the subject is W. Bagehot, *The English Constitution*, first published as a series of articles in the initial numbers of the *Fortnightly Review* in 1865-66 and brought out in book form at London in 1867. Bagehot was a keen-minded journalist who took pleasure in writing of the constitution as it actually was in his day, rather than of its theoretical and legalistic aspects only, as lawyers like Blackstone were wont to do. The most recent edition of *The English Constitution* (London, 1928) contains an illuminating introduction by Lord Balfour. Lord Bryce's famous discussion of flexible and rigid constitutions will be found in his *Studies in History and Jurisprudence*, Chap. iii.

Basic features of the governmental system:

1. Unitary, not federal

The constitution being what it is, certain great features of the British governmental system naturally follow. The first is its unitary, or non-federal, form. A federal system of government prevails where the political sovereign (whatever it may be in the particular case) has distributed the powers of government among certain agencies, central and divisional, and has done so through the medium of constitutional provisions which neither the central government nor any divisional government has power to alter. The important thing is not the territorial distribution of powers, because such a distribution has to be made under all forms of government, nor yet the amount or kinds of power distributed, but the fact that the distribution is made and maintained by some recognized authority superior to both central and divisional governments. The United States has a federal form of government because the partition of powers between the national government and the state governments is made by the sovereign people, through the national constitution, and cannot be changed by the government at Washington any more than by that at Albany or Harrisburg or Indianapolis.<sup>1</sup> On the other hand, the government of England is unitary, because all power is concentrated in a single government, centering at London, which has created the counties, boroughs, and other local political areas for its own convenience, which has endowed them, as subordinate districts, with such powers as it chose to bestow, and which is free to alter their organization and powers at any time, or even to abolish them altogether.<sup>2</sup> The governmental systems of France, Italy, Belgium, Japan, and most other states are of this same character.

<sup>1</sup> This definition of federalism is frankly legalistic and does not seem in every case to square with the facts. No one needs to be told that in all federally organized countries the powers of the central government tend to grow at the expense of those of the divisional governments, by usage and by legislation, and quite without any amendment of the formal constitution. Certainly this is true in the United States and Switzerland, as it also was in the old German Empire. Nevertheless, in the eye of constitutional law these changes represent, not acquisitions of new powers, but only amplifications or fulfillments of powers already conferred. On the nature and uses of federal government, see J. W. Garner, *Political Science and Government*, 417-422.

<sup>2</sup> This statement is made primarily with reference to England alone. Even Great Britain and the United Kingdom, however, are not federal, for the reason that the special positions occupied by Scotland and Northern Ireland rest entirely upon statutes passed by the parliament at Westminster and legally repealable at its discretion. Various proposals for "devolution," "home rule all round," etc., look

A second feature of the British system of government is the curious relationship existing between the two somewhat incongruous principles of separation of powers and (to use Mr. Ramsay Muir's apt phrase) concentration of responsibility. Influenced by the writings of Montesquieu and Locke, and following what they conceived to be the fundamental plan of the English government itself, the architects of early American constitutions, both state and national, grouped the functions of government into three major categories—executive, legislative, and judicial—and assigned each to an essentially separate branch or division of governmental machinery. Executive, legislature, and courts were placed in not quite water-tight compartments, for at various points one branch was given a check upon another; but the three were made sufficiently coördinate to prevent any one of them, it was believed, from gaining an excess of power. In Britain, there is likewise an appearance of separation. The crown is the executive; Parliament is the legislature; the courts form the judiciary. Furthermore, there is effective separation, in the sense that the working executive, *i.e.*, the ministry, is, in its purely executive and administrative capacity, subject to a good deal less control by the legislature than are our president and his subordinates; in the sense also that the judges take no such part in determining the law as do American judges through the process of judicial review. Nevertheless, the outstanding fact—apart from all theory—of the British national government today is the leadership and dominance (some call it dictatorship) of “the government,” *i.e.*, the cabinet, not only in administration, but in legislation, and even to some extent in justice as well. There is nothing like it in the United States. Our president, when he rises to the full height of his powers, is an imposing figure; but at best he falls far short of the British prime minister. Separation of powers keeps him at one end of Pennsylvania Avenue and Congress at the other, often working at cross purposes.<sup>1</sup> At London, concentration

2. Separation of powers as modified by concentration of responsibility

in the direction of federalism, although if they were adopted the result would not necessarily, or even likely, be a true federal system (see pp. 305–310 below). On the other hand, the Irish Free State has too much autonomy to be regarded as joined with the rest of the British Isles on a truly federal basis.

<sup>1</sup> The extraordinary powers voted to President Roosevelt by Congress during the special session of 1933, *e.g.*, in the National Recovery Act, undoubtedly gave the American executive as much actual control of affairs as any British prime min-

of responsibility, implicit in the cabinet system and held back by no constitutional barriers, cuts through every obstacle, and brings the prime minister and his colleagues into the position of an "all-powerful 'government,' leaving it to Parliament and the courts merely to regulate and check its action."<sup>1</sup>

3. Legal  
supremacy of  
Parliament

Dominant as the cabinet has become, a third fundamental of the British system still stands, *i.e.*, the ultimate supremacy and legal omnipotence of Parliament; after all, cabinet members themselves are members also of the larger body, and the latter's legal amplitude of power is not impaired by the circumstance that it is those members who also belong to the cabinet who largely decide what is to be done. Leaving out of account practical and moral restraints which operate powerfully upon it, and thinking only of what may be done under the law, Parliament can alter or rescind any charter, agreement, or statute; it can cause any official of the government to be dismissed and any judicial decision to be made of no effect; it can put an end to any usage and overturn any rule of common law; it can bend the constitution in any direction it likes.<sup>2</sup>

All acts of  
Parliament  
"constitutional"

It follows that every parliamentary act is "constitutional"; if a measure is passed which is contrary to the constitution as it has hitherto stood, the constitution simply becomes something different in that regard. One who follows English political discussion, even from afar, will now and then hear it charged that a legislative proposal, or even a new law, is unconstitutional. But this means only that somebody considers the offending proposal or act to be inconsistent with previously accepted fundamental law, or with an established usage, or with international law, or perhaps only with the accepted standards of morality. An act so regarded is legally quite as valid and enforceable as if no question had been raised. No one can allege that it is *ultra vires*. The word of Parliament, *i.e.*, the *latest*

ister or cabinet could ever hope to enjoy. But this presumably represented only a temporary departure from the regular order of things, similar to that witnessed under war-time conditions in the administrations of Presidents Lincoln and Wilson.

<sup>1</sup> R. Muir, *How Britain Is Governed*, 21. This matter will be touched on in another connection (see p. 291 below), and hence will not be elaborated here. On the history and applications of the doctrine of separation of powers, see H. Finer, *The Theory and Practice of Modern Government* (New York, 1932), I, Chap. vi, and on the English situation particularly, E. C. S. Wade and G. G. Phillips, *Constitutional Law* (London, 1933), 38-47.

<sup>2</sup> Cf. E. C. S. Wade and G. G. Phillips, *op. cit.*, 48-60.

word, is law, however it may cut across existing constitutional arrangements; and as such it will be enforced by the courts. The only way of getting round it is to procure its repeal by the same or a succeeding parliament. Something like the American practice of judicial review has gained a considerable foothold in Germany, Czechoslovakia, and other Continental countries.<sup>1</sup> But though at one time showing some leaning in the same direction, England since the seventeenth century has remained unaffected.<sup>2</sup> There, the principle still holds that whatever Parliament decrees is law and remains such until repealed by Parliament itself.

So far as England alone is concerned, the unitary form of the government has averted those clashes between rival authorities, central and divisional, which made judicial review a practical necessity in the United States. The complicated, and sometimes tense, relations between England and Scotland, and between Great Britain and Ireland, might, however, have given rise to something of the kind but for the one great barrier which has always stood, and still stands, in the way, *i.e.*, the idea of the supremacy of Parliament naturally held in a country devoted to popular government yet uncommitted to any rigid doctrine of separation of powers. As it is, the courts simply accept the statutes put forth at Westminster and enforce them. In applying them to particular cases, the judges have to determine what they mean; and sometimes this involves a rather important power of interpretation. Beyond this, however, they have no discretion. Punctuated at every turn by Supreme Court decisions on the constitutionality of acts of Congress and of the state legislatures, the constitutional history of the United States presents an appearance altogether different from that of the mother land.

<sup>1</sup> For a brief account of this development, see J. W. Garner, *Political Science and Government*, 759-770. Cf. pp. 609, 693-695 below.

<sup>2</sup> Except as there is such review of orders in council and administrative rules (see p. 139 below). But this does not touch the matter of the constitutionality of statutes. The only trace of judicial review of statutes in all British practice is the right of the judicial committee of the privy council (see p. 428 below) to advise the crown to declare unconstitutional an act of a dominion, or other colonial, legislature. This, of course, in no wise affects legislation at Westminster. It is interesting to note that judicial review is practiced freely in Canada, Australia, South Africa, and the Irish Free State. In the last-mentioned jurisdiction, the constitution expressly confers the function upon the courts; elsewhere they have developed it without direct constitutional authority, as in the instance of the United States.

4. Protec-  
tion of pri-  
vate rights:

a. Bills of  
rights in  
various  
countries

The foregoing remarks about the legally unlimited powers of Parliament may lead one to wonder what protection the individual citizen, or "subject," has against infringement of his personal liberties. What is to prevent Parliament from passing acts arbitrarily curtailing his rights, or from permitting other agencies of the government to disregard them? On what basis, indeed, does he enjoy any rights and liberties at all? Royal tyranny is a thing of the past. But what about the tyranny that might be practiced, or condoned, by an omnipotent legislature? In other lands, the commonest mode of guaranteeing private rights is that of enumerating them in the written constitution—either as a formal "bill of rights" or in a series of less connected provisions amounting to the same thing—thereby placing squarely upon the government an obligation to observe and uphold them. Bills of rights of this nature are found in the constitutions of nearly all of the American states; and although none was originally included in the national constitution, the defect, as it was considered, was soon remedied by the addition of the first eight amendments. A "Declaration of the Rights of Man and of the Citizen," promulgated in 1789, was prefixed to the French constitution of 1791, and, although not found in the fundamental laws of 1875 under which the Republic is now governed, it is by many regarded as by implication still in effect. Nearly every European state that adopted a new constitution after the World War gave much prominence to provisions of this character—for example Germany, which bracketed with solemn guarantees of rights an equally imposing enumeration of duties and obligations.<sup>1</sup>

b. The Brit-  
ish method

In Britain, too, there is no lack of constitutional guarantees of the kind, even though they are not assembled in any single document. Some, *e.g.*, the privilege of the writ of habeas corpus, the right to bear arms, the right of petition, and immunity from excessive bail and from cruel and unusual punishments, are expressly covered in great statutes like the Bill of Rights which from time to time have taken their places in the growing body of written constitutional law. Others, as freedom of speech and assembly and freedom of religion, rest no less solidly upon

<sup>1</sup> See pp. 681-684 below. Cf. A. J. Zurcher, *The Experiment with Democracy in Central Europe* (New York, 1933), Chap. xii, and A. Headlam-Morley, *The New Democratic Constitutions of Europe* (London, 1928), Chaps. ii-iii, xv.



rules of common constitutional law. Hardly a right or liberty, indeed, which men have learned to hold dear will fail to be found unequivocally guaranteed somewhere. Back of all else, furthermore, stands that most precious of all principles of English polity, the "rule of law," never expressly enacted as a statute, but implicit in a long line of parliamentary measures and judicial decisions, and in any event as securely grounded in common law as anything can well be. As defined by an English jurist, the rule of law means "the supremacy or dominance of law, as distinguished from mere arbitrariness, or from some alternative mode, which is not law, of determining or disposing of the rights of individuals."<sup>1</sup> In other words, under the rule of law, obligations may not be imposed by the state, nor property interfered with, nor personal liberty curtailed, except in a legal manner and on legal authority.

To be sure, Parliament can, if it chooses, limit, suspend, or entirely withdraw any specific right; it has the ultimate power, if it is so minded, to set aside the rule of law itself. Under the stress of war-time conditions in 1914-18, it imposed (or permitted other authorities to impose) several restrictions of the sort, notably in the famous Defense of the Realm Act of 1914. But tradition and public opinion stand wholly opposed to any infringement not manifestly necessitated by national emergency, and certainly to prolonging such infringement beyond duration of the crisis which demanded it. Furthermore, it is to be observed (1) that in many countries, *e.g.*, Germany (under the Weimar constitution), where rights are supposed to be given special sanctity by being enumerated in a written fundamental law that is beyond the power of the government to modify, restrictions and exceptions are nevertheless authorized to be made by proper authority, and (2) that even when no such express provision appears, guarantees of rights are not construed as absolute, but rather as subject to limitation when the national well-being requires. The fact is that, although at first glance private rights seem to enjoy no such sheltered position in Britain as elsewhere, they are, both in law and in practice, not a whit less secure on that account. After all, it is not, in such matters, paper declarations that ensure results, but rather the sanctions of tradition, principle, and public opinion. Freedom

<sup>1</sup> Lord Hewart of Bury, *The New Despotism* (London, 1929), 19.

of speech is as truly a part of the British way of doing things as is the responsibility of ministers. Neither rests upon written law, nor indeed upon law at all; and there is positive advantage in the fact. Both have every assurance of being observed strictly, barring emergency conditions calling for momentary suspension of the customary way of doing things. When such emergency arises, it is a welcome convenience to be able to make the necessary readjustments without being obliged first to overcome the obstacles imposed by written law.<sup>1</sup>

<sup>1</sup> On the history of personal liberty in England, see T. E. May and F. Holland, *Constitutional History of England*, II, Chaps. ix-xiv. Full discussion of the subject will be found in A. V. Dicey, *Law of the Constitution* (8th ed.), Chaps. iv-viii; E. C. S. Wade and G. G. Phillips, *op. cit.*, Pt. vii, and E. Jenks, *The Book of English Law* (London, 1928), Chaps. x-xii. There is comment on the disadvantages of a written bill of rights in W. F. Willoughby, *Government of Modern States*, 151-157.

## CHAPTER IV

### THE CROWN—STATUS AND USES OF KINGSHIP

Close to the center of the picture of English government now to be unfolded stands the Mother of Parliaments, and it would seem logical to turn attention forthwith to that remarkable institution. Properly to comprehend what Parliament is and does, however, requires acquaintance with the authorities and agencies that have to do with executive activities, with policy-framing, and with administration. It will, furthermore, be convenient to treat Parliament at a point where it will be feasible to pass on directly to the consideration of political parties. Accordingly, we open our survey by bringing into view the king, the privy council, the ministers, the cabinet, and the civil service. After all, in the light of foregoing observations concerning the heightened power and importance of the "government," we shall not be starting far from the real focus of the constitutional system as it now operates.

Hardly is the first step taken before we come upon a most striking illustration of the constitution's penchant for disguises, namely, the contrast existing between theory and reality in the position occupied by the king—in other words, ~~the distinction~~ between king and "crown" which Gladstone once pronounced the most vital fact in English constitutional practice. Various writers in times past have taken considerable delight in startling their readers with staccato sentences enumerating the weighty and devastating things that the British sovereign still has it in his power to do. In the first book in which the true character of cabinet government was ever explained, Walter Bagehot, two generations ago, wrote that Queen Victoria could disband the army, dismiss the navy, make a peace by the cession of Cornwall, begin a war for the conquest of Brittany, make every subject a peer, pardon all offenders, and do other things too frightful to contemplate.<sup>1</sup> A decade later, Gladstone spoke of the sovereign as receiving and holding all revenues, appoint-

King and  
"crown"

<sup>1</sup> *The English Constitution* (2nd ed., London, 1872), Introd., xxxiii.

ing and dismissing ministers, making treaties, waging war, concluding peace, pardoning criminals, summoning and dissolving Parliament, "for the most part without any specified restraint of law," and under "an absolute immunity from consequences."<sup>1</sup> Legally, this was correct enough; and one would not have to go back many centuries to come upon a time when it would have been true actually and literally. But of course neither the journalist nor the statesman meant for a moment to suggest that the Queen, or any other British sovereign in these days, would dream of doing any of the things mentioned. They meant only to call attention to an ultimate historic and legal principle of the constitution which never has been quite extinguished, even though nowadays it is as obsolete in practice as the belief in Thor and Woden. If speaking in terms of actualities, they would have said that the acts enumerated could be performed, not by the sovereign, but by the *crown*.

Nature of the  
crown

What is the crown? That is a difficult question to answer in language that will seem clear and conclusive. Perhaps it can best be met, in somewhat roundabout fashion, by recalling what has happened to English kingship throughout the centuries. There was a time when each king was an elected and purely personal ruler. When a king died, there was an "interregnum," which practically meant a cessation of government for the time being. Gradually, kingship, becoming hereditary, took on the character of an institution, an office, a function, which went on uninterruptedly regardless of the coming and going of individual monarchs. The king as an individual was one thing; the king as an institution, with all the accumulated powers and traditions, was quite another. As yet, the king, for the most part, wielded these powers and carried on these traditions personally. But the institutionalizing of the royal function had opened a way, whenever it should be desired, to say to the king that while he might go on wearing the crown and enjoying the prestige, the actual powers and duties of which he was custodian were going to be transferred elsewhere; and that is precisely what the leaders of victorious parliamentary forces in the seventeenth and eighteenth centuries said to him. The king as a person did not lose everything; he still has an important rôle in public affairs. But appointment of officials, direction of administration,

<sup>1</sup> *Gleanings from Past Years* (New York, 1889), I, 227.

leadership in law-making, initiative in policy-framing—all passed completely into other hands, *i.e.*, partly the hands of Parliament, but mainly those of the ministers, and in particular the cabinet. To this day, they are wielded in the king's name; in legal theory, the king is still the source of all authority. But the king that actually functions in relation to them is not the personal king, but rather the institutional king; and the institutional king is but a sort of fiction standing back of the actual supreme executive authority embodied in a subtle association of sovereign, ministers, and Parliament. This somewhat intangible synthesis of supreme authority is what we call the crown. Thus defined, the crown may indeed be, as Mr. Sidney Low has described it, "a convenient working hypothesis";<sup>1</sup> nevertheless, it is at the same time a real and essential feature of the country's governmental system. The concrete, visible embodiment of it is the cabinet, or, perhaps more accurately, the cabinet in conjunction with the permanent civil service. The Englishman commonly refers to it simply as "the government."

Thinking, then, of the crown as essentially the supreme executive authority in the state (in somewhat the same broad sense in which the president is the chief executive in the United States), and bearing in mind that the king is not even yet entirely dissociated from it in actual practice, as he certainly is not in legal theory, we may first take some note of the origins, scope, and nature of the powers of the crown, and then consider the position which the sovereign himself occupies and the reasons why kingship survives at all in an age of fast collapsing monarchies.

As they stand today, the powers of the crown are derived from two great sources, *i.e.*, prerogative and statute. The nature of statute is obvious enough. Any act of Parliament that assigns new duties to the executive authorities, provides for the appointment of new administrative officers, or in other ways increases the work of the government adds by so much to the powers wielded in the name of the crown; and it goes without saying that such increases are numerous and important. But what is prerogative? As conveniently defined by Dicey, it is "the residue of discretionary or arbitrary authority which at any time is legally left in the hands of the crown."<sup>2</sup> Originally,

Sources of  
powers of the  
crown

<sup>1</sup> *The Governance of England* (new ed., London, 1916), 255.

<sup>2</sup> *Law of the Constitution* (8th ed.), 420

before the days of parliamentary control of public affairs—when, indeed, there was no Parliament at all—all powers rested upon this basis; all were conceived of as “prerogatives” inhering in the person of the king. Later, Parliament began stripping away powers, even while sometimes also bestowing new ones; in addition, old powers fell into disuse and became obsolete. Such powers, however, as survived on the earlier basis, together with such newer ones as were picked up by usage as distinguished from statute, continued to form the prerogative; and to this day these powers constitute a very large and important part of the sum total possessed. Prerogative, therefore, means, substantially, those powers which have not been granted—those which have been acquired by sheer assumption, confirmed by usage, and tolerated or accepted as features of the governmental system even after Parliament came into a position to abolish or alter them at will. In point of fact, many crown powers as we find them today rest upon neither prerogative nor statute exclusively, being rather derived originally from prerogative but later defined or restricted by statute. And, after all, the question of whether a given power is derived from prerogative or from statute is of little practical importance; all are equally subject to parliamentary regulation and are alike exercised under full responsibility to the House of Commons.

Changeable-  
ness and  
variety of  
these powers

From what has been said, it follows that the powers of the crown are endlessly undergoing change—now being cut down at certain points and again being carried to new heights at others. Curtailment has come in three principal ways. The first is great contractual agreements between king and nation (or some part of the nation), best illustrated by Magna Carta. The second is prohibitive legislation, of such nature as the clauses of the Bill of Rights forbidding, suspending, or dispensing with laws. The third is simple disuse, illustrated by the lapse, since the Tudor period, of the power of the crown to add to the membership of the House of Commons by arbitrary enfranchisement of boroughs, and the disappearance, since a somewhat earlier period, of the power to create peerages for life except by express authorization of Parliament. On the other hand, the crown's powers have been steadily augmented, both by custom (which may be regarded as contributing new elements to the prerogative) and by legislation—in later centuries chiefly, of course,

the latter. When, for example, Parliament adds an air service to the army, establishes a system of old age pensions, authorizes a new tax, or passes a new immigration act, it imposes fresh duties of administration upon the crown and thereby perceptibly enlarges the volume of its power. The powers of the crown at any given moment represent, therefore, the ever-shifting resultant of this pull and haul of forces—of processes building up and others tearing down.

Two further facts about these powers are to be noted. The first is that crown authority, instead of being less than in generations past, is greater, and is still growing. A remarkable aspect of political development throughout the world in the past hundred years has been the expansion of the sphere which government undertakes to occupy, and accordingly of authority wielded and functions performed; and in Britain, as elsewhere, this has meant a steady augmentation of powers and activities of those parts of the government which execute and administer, equally with that which legislates. It is one of the paradoxes of the British constitution that the powers of the crown have grown as democracy has spread. A second fact is that while these powers have been spoken of as mainly executive, they are by no means exclusively such. Even in the United States, where government is organized fundamentally according to the principle of separation of powers, functions of different kinds are not kept altogether in different hands; there are also "checks and balances," so that the president participates in law-making, the Senate acts on nominations to appointive offices, and so on. In Great Britain also, the principle of separation, while finding important (even if less formalized) applications, is by no means adhered to rigidly; and we shall not be surprised to find the crown having to do, in highly important ways, with both legislation and justice as well as with executive and administrative matters. To obtain a clearer idea of what the crown really means in the governmental system of today, we may pass certain of its principal functions in brief review.

To begin with, the crown is the executive. As such, it sees to the enforcement of all national laws; appoints and commissions (with no right of confirmation or other check by Parliament) substantially all higher executive and administrative officers, all judges, and the officers of the army, navy, and air force; directs

The Crown as  
the execu-  
tive:

the work of administration; has unlimited power to remove officers (except judges) and discharge employees; conducts the country's foreign relations, and also its dealings with the colonies and dominions; holds supreme command over the armed establishments; and wields the power of pardon and reprieve, subject only to the restriction that no pardon may be granted in cases in which a penalty has been imposed for a civil wrong.

1. Direction  
of adminis-

Two or three of these executive functions call for a word of comment.<sup>1</sup> First, the matter of administration. Precisely as the president of the United States directs national administration in all of its widely ramifying branches, so the composite authority in Britain known as the crown supervises and controls the enforcement of national laws, the collection of national revenues, the expenditure of national funds, and the many other things that have to be done in carrying on the work of the government throughout the realm. In the United States, Congress concerns itself with administrative matters to such a degree that the president and his chief co-workers, the heads of departments, often find themselves seriously restricted and handicapped. In Britain, the cabinet and the individual ministers who supervise administration are allowed a relatively free hand.<sup>2</sup> In the latter country, furthermore, the chief officers of the crown have a very important function with which, on account of our federal system of government, the president and heads of departments at Washington have exceedingly little to do. This is the supervision, and at many points control, of the work of local government and administration as carried on by the authorities of counties, boroughs, urban and rural districts, and other areas. In the last seventy-five years, this interrelationship of national and local administration has developed on a truly remarkable scale; and the end is not yet.<sup>3</sup> The only analogy in the United States is supplied by the control over local jurisdictions exercised by the governments of the states.

2. The con-  
duct of for-  
eign relations

The crown also manages the country's foreign relations. All ambassadors, ministers, and consuls accredited to foreign states are appointed in its name, and the diplomatic and consular representatives of such states are received in the same way. All in-

<sup>1</sup> Others are dealt with elsewhere, *e.g.*, Chap. VII below.

<sup>2</sup> See p. 297 below.

<sup>3</sup> See pp. 402-406 below.



structions to official representatives abroad go out as from the crown; all delegates to international congresses and conferences of a diplomatic character are so accredited; foreign negotiations are similarly carried on. War is declared and peace made as if by the king alone. Of course it is futile to declare war unless there is assurance that Parliament will supply the funds requisite for prosecuting it, and either house, or both, may express disapproval of the government's policy or in other ways make its position untenable. But Parliament itself has no direct means of bringing about a war or of bringing a war to an end.<sup>1</sup> When on the fateful fourth of August, 1914, Great Britain cast her lot with France and Belgium in their titanic conflict with Germany, it was the ministers, acting in the name of the crown, who made the decision. Parliament happened to be in session at the time, and the Foreign Secretary explained the diplomatic situation in two extended speeches in the House of Commons, and received impressive evidences of support. But had the ministers chosen to send no ultimatum to Berlin, and to hold to a policy of neutrality, the country would not (at that time at all events) have become a party to the war.

From what has been said, it follows that the treaty-making power belongs to the crown; no other authority can negotiate, sign, and ratify any public international agreement. It is true that by their terms treaties sometimes make ratification conditional upon approval by Parliament; also that in these days such approval is regarded as essential in the case of any treaty altering the law of the land (*e.g.*, by reducing customs duties), ceding territory, or pledging payments of money out of the national treasury. Moreover, any treaty of high moral import, such as the Locarno treaty of 1925, is almost certain to be laid before the houses. People who assumed, however, that submission of the treaty of Versailles in 1919 would usher in a new era in which no treaties would be made without parliamentary assent have found that they were mistaken. Treaties are still, from time to time, negotiated and ratified by action of the crown alone. In deference to the principle of democratic control over

Treaty-  
making

<sup>1</sup> F. R. Flournoy, *Parliament and War; The Relation of the British Parliament to the Administration of Foreign Policy in Connection with the Initiation of War* (London, 1927), Chaps. i, xii; E. P. Chase, "Parliamentary Control of Foreign Policy in Great Britain," *Amer. Polit. Sci. Rev.*, Nov., 1931.

foreign relations, Labor leaders have long advocated the submission of all international agreements; yet not even the two governments of Mr. MacDonald fully carried out such a policy. The United States, it may be added, is one of very few countries in which treaties must invariably receive legislative approval; and while in those cases elsewhere in which they are submitted at all they require action by both branches of the legislature, there is no country other than the United States in which a simple majority does not suffice to give consent to ratification.

3. Management of colonial and imperial affairs

Another major field of executive control is the colonies. The self-governing dominions—Canada, Australia, New Zealand, and the rest—are subject to but little restraint from either crown or Parliament; yet even here the governor-general is a crown appointee and, under new principles adopted in 1926, is regarded as the immediate representative of the sovereign. The same thing is true in the case of the Irish Free State. The dependent empire of India is administered by agents of the crown, as are also the numerous crown colonies, such as Jamaica and Malta, and like-wise protectorates and mandated regions.<sup>1</sup>

The crown and legislation:

But the crown is not only an executive; it also shares in the work of legislation. Technically, indeed, all law-making power is vested in the “king in Parliament,” which means historically the king acting in conjunction with the two houses; and to this day every statute declares itself to have been enacted “by the King’s Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same”—even though as a rule the sovereign personally has had little or nothing to do with the matter. In law-making, as in other things, king has yielded to crown.

1. Relation to Parliament

The rôle of the latter is, however, indispensable. In the first place, the crown alone can summon Parliament, prorogue it, dissolve it, and set in motion the processes by which a new House of Commons is elected. In a very real sense, the houses transact business only during the pleasure of the crown. Furthermore, men who are officers of the crown guide and control in practically all that Parliament does. They prepare the king’s speech, which in reality sets forth their own program at the opening of a session; they decide what bills shall be introduced, and when; they lead

<sup>1</sup> See Chap. XX below

in explaining and defending these bills, and pilot them through to enactment. In a word, responsibility for whatever is done or not done at Westminster can always be laid chiefly at their door. It is true that these men are also members of Parliament. But the circumstance that gives them their power is the fact that they are ministers of the crown. Still further, no bill passed by Parliament gains the character of law, or is of effect in any way, unless and until it has received the crown's assent. Here again it is true that such assent has not been withheld from a measure in more than two hundred years, and that the ceremony by which it is extended to bills, singly or in batches, is in these days nothing more than a picturesque formality. Assent is, however, a necessity; and it still might actually be refused were it not that, under a cabinet system of government, a ministry finding itself unable to advise final approval of a bill duly passed by Parliament would simply step aside in favor of one prepared to take a different attitude.

In one other important way the crown has to do with legislation. Except in the non-self-governing colonies, the crown no longer makes laws by inherent power. Nevertheless, measures having the force of law, and applicable in Britain itself, do today emanate from the crown. These measures take the form of orders in council, being, as the name indicates, orders issued by the king-in-council, *i.e.*, the king and the privy council—in effect, though not in form or theory, the cabinet. In the main, such orders deal with matters which are beyond the competence of the crown acting independently, and are issued in pursuance of power conferred by Parliament. Promulgation of them by the crown is, nevertheless, as Lowell puts it, "a species of subordinate legislation."<sup>1</sup>

2. Orders in council

Turning to the domain of justice, we find that whereas in ages past the "king's law" was enforced in the "king's courts," and the sovereign himself did not scruple to intervene and upset the judgments of his tribunals, the crown nowadays plays a relatively minor rôle. It cannot create new courts, or alter the organization or procedure of any existing court, or change the number, tenure, or pay of judges, or substitute different modes of appointment. All these matters are under the jurisdiction of Parliament. Judges are appointed, indeed, by the crown; and all appeals coming from

The crown and justice

<sup>1</sup> This matter of orders is dealt with more fully later on. See pp. 80-81 below.

the tribunals of India, the colonies, and the Channel Islands are decided by the crown on the basis of advice tendered by the judicial committee of the privy council, by which authority the appeals are actually considered and decided. But judges can be removed by the crown only at the request of both houses of Parliament; while in office they may not be interfered with in any way; and the court of last resort for Britain herself is, not the crown, but the House of Lords. By hoary custom, the crown is still spoken of, often proudly, as "the fountain of justice." Obviously it is such, in reality, to only a limited extent.

The crown as  
a fountain of  
honor

In greater degree, the crown is "the fountain of honor"; for it is the ministers (chiefly the prime minister) acting in the crown's name that single out men for various titles and distinctions, arrange their names in lists for announcements at New Year's and other suitable occasions, and cause the proper patents or other papers to be issued. Some of these honors, *e.g.*, peerages, have a political import; others, like knighthood, are of social significance only.

The crown  
and the  
established  
churches

Finally may be mentioned the connections between the crown and the established churches of England and Scotland.<sup>1</sup> Churches other than the Anglican in England and the Presbyterian in Scotland are voluntary associations, without state connections and free to regulate their creeds and rituals as they like. But the two bodies mentioned are built (in different ways) into the fabric of the state, and both crown and Parliament have large powers of control over them. In the case of the English Church, the archbishops and bishops are appointed by the crown, which means in effect by the prime minister; for although it is true that when a vacancy arises a *congé d'élire*, or writ of election, is sent to the canons of the cathedral affected, it is always accompanied by a "letter missive" designating the person to be chosen. Deans, too, are regularly, and canons frequently, appointed by the crown, although sometimes by the bishop. The "convocations" of Canterbury and York—bicameral legislative bodies composed of clerics of various grades—meet only by license of the crown, and their acts require assent of the crown just as do acts of Parliament. Crown functions in relation to the estab-

<sup>1</sup> The Anglican Church was disestablished in Ireland in 1869 and in Wales in 1920. There are now no established churches in those countries.

lished Presbyterian Church in Scotland are less important, though not without significance.<sup>1</sup>

Such, in outline, are the powers of the crown today. How are they actually exercised? The answer is, in a variety of ways—some by the cabinet, some by the privy council and its committees, some by this or that board or other group of ministers, or even by a single minister—in almost every way, in fact, except that in which under historical and legal theory they should be exercised, *i.e.*, by the king himself. Three or four chapters will presently be devoted to a description of the executive and administrative machinery through which the crown now functions. The sovereign in person, however, is still far from being a negligible part of the governmental system; and before passing on to the actualities of workaday administration we must give some attention to the position which he occupies, both legally and in practical fact, noting the ways in which he helps carry on the business of state, and bringing to view some of the reasons why the great majority of Englishmen agree that the sort of kingship that has been arrived at is useful and ought to be perpetuated.

How crown  
powers are  
exercised

From the time when William and Mary were welcomed from Holland and placed on the throne of the repudiated Stuarts, there has never been any doubt that the tenure of English kings and queens rests entirely upon the will of the nation as expressed in parliamentary enactment. The statute regulating the succession today is the Act of Settlement, dating from 1701. It provided that, in default of heirs of William and of his expected successor, Anne, the crown and all prerogatives appertaining thereto should "be, remain, and continue to the most excellent Princess Sophia, and the heirs of her body, being Protestants." Sophia, a granddaughter of James I, was the widow of the ruler of one of the smaller German states, the electorate of Hanover. There were other heirs whose claims, in the natural order of succession, might have been considered superior to hers. But the Bill of Rights debarred Catholics, and, this being taken into account, she stood first. Sophia narrowly missed becoming queen, because Anne outlived her by a year. But her son mounted the throne, in 1714, as George I, and the dynasty thus installed has

The sover-  
eign: title  
and descen

<sup>1</sup> On the relations of crown, Parliament, and the churches, see A. L. Lowell, *op. cit.*, II, Chaps. li-liiii.

reigned uninterruptedly to our own day. The present monarch, George V, is the eighth in the line. For a century and a quarter, the sovereign of Great Britain was also the ruler of Hanover. At the accession of Queen Victoria in 1837, however, the union ended, because the law of Hanover forbade a woman to ascend the throne of that country. The term "Hanoverian"—and, more specifically, the designation "House of Saxe-Coburg"—which long clung to the dynasty, came, therefore, to have only an historical significance; and in 1917 anti-Teutonic feeling led to the adoption of the unimpeachably English name, House of Windsor.<sup>1</sup> If it chose, Parliament might, of course, repeal that part of the Act of Settlement which governs the succession and place a different family on the throne, or, for that matter, might abolish kingship altogether.

Within the reigning family, the throne descends according to the same principle of primogeniture that formerly governed in the inheritance of land.<sup>2</sup> When a sovereign dies, the eldest son—who is by birth Duke of Cornwall and is created Prince of Wales and Earl of Chester—inherits; if he is not living, his eldest son succeeds. If no male heir is available in this branch of the family, the deceased sovereign's second son inherits, and so on, elder sons being always preferred to younger, and male heirs to female. Should there be no one within the stipulated degrees of relationship to succeed, Parliament would install a new dynasty; and in case of the accession of a minor, or the incapacitation of a reigning sovereign, a regency would be provided for in the same

<sup>1</sup> A good deal of interesting history is connected with the sovereign's "style and titles." The royal title as it stands today is (in English translation of the official Latin): "George V by the Grace of God of Great Britain, Ireland, and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India." The title "Defender of the Faith" dates from the days of Henry VIII; that of "Emperor of India" from a royal proclamation of 1876; and the phrase, "British Dominions beyond the Seas" from a proclamation of 1901. From 1801 to 1927 the general title included the words "of the United Kingdom of Great Britain and Ireland King," etc. At the last-mentioned date, however, a royal proclamation, issued in pursuance of an act of Parliament, dropped out the term "United Kingdom" and placed Ireland in the title coördinately with Great Britain and with the overseas dominions. This change was made in deference, of course, to the fact that, even though the Act of Union passed in 1800 stood (as it still stands) unrepealed, the constitutional changes in Ireland incident to the creation of the Free State had brought the United Kingdom, on its former basis, to an end. For the documents, see A. B. Keith, *Speeches and Documents on the British Dominions, 1918-1931* (Oxford, 1933), 170-171.

<sup>2</sup> Certain changes in the law of property, made in 1925, do not affect kingship or other hereditary titles.

way—unless it were deemed sufficient (as at the time of the serious illness of George V in 1928–29) to entrust the royal functions merely to a temporary commission or council.

No Catholic may inherit, nor anyone marrying a Catholic. This is by virtue of the Bill of Rights; and the Act of Settlement goes on to prescribe that the sovereign shall in all cases “join in communion with the Church of England as by law established.” If after his accession he should join in communion with the Church of Rome, profess the Catholic religion, or marry a Catholic, his subjects would be absolved from their allegiance, and the next in line who was a Protestant would succeed. It is required, furthermore, that the sovereign shall at his coronation take an oath specifically abjuring the tenets of Catholicism. Until 1910, the phraseology of this oath, dating from an age in which men felt strongly about religious differences, was offensive not only to Catholics but to temperate-minded men of all faiths. An act of Parliament, passed on the eve of the coronation of George V, made it, however, less objectionable. A new sovereign is now required merely to declare that he is a faithful Protestant and that he will, “according to the true intent of the enactments which secure the Protestant succession to the throne of the Realm, uphold and maintain the said enactments to the best of his power according to law.”

Religious  
tests

The sovereign enjoys large personal immunities and privileges. He cannot be called to account for his private conduct in any court of law or by any legal process. He cannot be arrested, his goods cannot be distrained, and as long as a palace remains a royal residence no sort of judicial proceeding against him can be executed in it. He may own land and other property, and may manage and dispose of it precisely as any private citizen. Finally, he is entitled to a generous allowance out of the public treasury for the support of the royal establishment.

Royal im-  
munities and  
rights

The present arrangements for keeping the king's purse filled date, in the main, from 1689. Up to that time, there was no regular allocation of funds to the sovereign as distinguished from the government generally. Originally—when to all intents and purposes the king was the government—all of the revenues were regarded as his, and he employed them pretty much as he liked; and although this ceased to be the case long before the seventeenth century, most sovereigns—certainly the Stuarts—con-

The Civil  
List

tinued to dip freely into the national funds for personal uses and frequently to thwart the will of Parliament and the nation by this means. Naturally enough, the occasion was seized in 1689, when the monarch's status was being freshly defined all along the line, to put matters on a different basis; and the plan adopted was, as might be surmised, that of allocating to the king a fixed amount of money per year while placing all remaining revenue beyond his reach. At this time, more was indeed allowed the king than he was expected to use for personal and court expenses. Out of the £700,000 per year voted to William and Mary, the joint sovereigns were required to pay the salaries of ambassadors and judges, maintain the civil service, and take care of pensions; and from these items chargeable on the king's funds arose the name "Civil List," nowadays often applied to the subsidy itself. For a long time, too, the monarch clung to some of the royal estates and to other sources of personal revenue, giving him still a considerable amount of financial leeway. Under George III and his earlier successors, however, the plan of 1689 was carried to its logical conclusion. The kings gave up most of their lands and other sources of independent income, while Parliament relieved them of item after item on the Civil List, until, in 1830, everything was withdrawn except the maintenance of the royal family and the court. The so-called Civil List grant is invariably voted once for all to a new sovereign at the beginning of his reign. The yearly sum allowed both Edward VII and George V was £470,000.<sup>1</sup>

The sovereign's position in the government

Viewed from a distance, British kingship is still imposing. The sovereign dwells in a splendid palace, sets the pace in rich and cultured social circles, occupies the center of the stage in solemn and magnificent ceremonies, makes and receives stately visits to and from foreign royalty,<sup>2</sup> and seems to have broad powers of appointment, administrative control, military command, law-making, justice, and finance. Examined more closely, however, the king's position is found to afford peculiarly good illustration of the contrast between theory and fact which runs so persistently through the English governmental system. On the social and ceremonial side, the king is no doubt quite as important as ap-

<sup>1</sup> As a contribution to national economy, George V has in recent years returned a portion of his allowance to the treasury. There are, in addition, certain annuities to the sovereign's children, except the Prince of Wales, who lives from ample revenues that come to him in the capacity of Duke of Cornwall.

<sup>2</sup> Naturally, these are fewer now than before the World War.



pearances indicate; indeed, one has to know England rather well to appreciate how great is his influence in at least the upper levels of society. Of direct and positive control over public affairs—appointments, legislation, military policy, the church, finance, foreign relations—he has, however, virtually none. There was, of course, a time when his power in these great fields was practically absolute. It was certainly so under the Tudors, in the sixteenth century. But the Civil War cut off large personal prerogatives, the Revolution of 1688-89 severed many more, the apathy and weakness of the early Hanoverians cost much, and the drift against royal control in government continued strong, even under the superior monarchs of the last hundred years—until the king now finds himself literally in the position of one who “reigns but does not govern.” When we say that the crown appoints public officers, we mean that ministers, who themselves are selected by the king only in form, make the appointments. When the king attends the opening of a parliament and reads the Speech from the Throne, the message is one which has been written by these same ministers. “Government” measures are indeed continually framed and executive acts performed in the name of the crown; but the king may personally know little about them, or even be strongly opposed to them. Two great principles, in short, underlie the entire system: (1) the king may not perform public acts involving the exercise of discretionary power, except on advice of the ministers, evidenced by their countersignature, and (2) for every public act performed by or through them these ministers are singly and collectively responsible to Parliament. The king can “do no wrong,” because the acts done by him or in his name are chargeable to a minister or to the ministry as a group. This tends, however, to mean that the king can do nothing; because ministers cannot be expected to shoulder responsibility for acts which they do not themselves originate or approve.<sup>1</sup>

<sup>1</sup> Already in the time of Charles II this situation was well enough understood to call out an oft-cited passage of wit. A courtier once wrote on the royal bedchamber:

Here lies our sovereign lord the King  
Whose word no man relies on;  
He never says a foolish thing  
Nor never does a wise one.

“Very true,” retorted the king, “because, while my words are my own, my acts are my ministers’.”

It would be erroneous, however, to conclude that kingship in England is moribund and meaningless, or that the king has no actual influence in the government. Americans are likely to wonder why an institution which seems so completely to have outlived its usefulness has not been abolished; and Englishmen are free to admit that if they did not actually have a royal house they would hardly set about establishing one. Nevertheless, the services rendered by the monarch are considerable; his influence upon the course of public affairs may, indeed, at times be decisive.

Some things  
that the sov-  
ereign actu-  
ally does

In the first place, the king still personally performs certain definite acts, which in some cases are so indispensable that if kingship were to be abolished some other provision would have to be made for them. He receives foreign ambassadors, even if only as a matter of form and in the presence of a minister. He reads the Speech from the Throne, although the Lord Chancellor may substitute for him. He assents to the election of a speaker by the House of Commons, though this, too, may be done by proxy.<sup>1</sup> But two important things, at least, he, and he only, can do. One is commissioning a political leader to make up a ministry; the other is assenting to a dissolution of Parliament, entailing a general election. The process of making up a new ministry will be dealt with later, and it will suffice here merely to note that while the party system has developed to a point where the sovereign is left little or no discretion in selecting a prime minister, he is not bound to act upon the advice tendered him in the matter and might conceivably find himself in a position to make a real choice. In any case, no one else can commission a new premier in the form required by established custom. The whole executive authority of the realm falls back temporarily into the king's hands when a ministry resigns. The situation with regard to dissolution is substantially the same. The decision to dissolve is invariably made by the cabinet, which, however, must obtain the king's consent before the plan can be proceeded with; and although consent has not actually been withheld since before the reign of Queen Victoria, it is commonly considered that in a very unusual situation it might be denied (as it sometimes is by governors-general in the dominions), and even that the sovereign could dismiss a ministry in order to

<sup>1</sup> As assenting to bills passed by Parliament invariably is. See p. 268 below.

force a dissolution—although in no case has he done so since 1784.<sup>1</sup>

Of larger practical importance than occasional formal acts of the kind mentioned is the monarch's day-to-day rôle as critic, adviser, and friend. In the oft-quoted phrase of Bagehot, the sovereign has three rights—the right to be consulted, the right to encourage, and the right to warn. "A king of great sense and sagacity," it is added, "would want no others."<sup>2</sup> Despite the fact that during upwards of two hundred years the sovereign has not attended the meetings of the cabinet, and hence is deprived of opportunity to wield influence directly upon the deliberations of the ministers as a body, the prime minister keeps him fully informed upon the business of state; and cabinet meetings at which important decisions are to be made are frequently preceded by a conference in which the subject in hand is threshed out more or less completely by king and chief minister. Merely because the earlier relation has been reversed, so that now it is the king who advises and the ministry that arrives at decisions, it does not follow that the advisory function has ceased to be of importance.

The sovereign as a counsellor

It is, perhaps, superfluous to say that the king's suggestions and advice on matters of public policy need not be acted upon. Ministers will be slow, however, to disregard them. His exalted station alone would give them weight. But there is the further consideration that a sovereign who has been on the throne for some time is likely to have gained a broader knowledge of public affairs than that possessed by most of the ministers. After ten years, Peel once remarked, a king ought to know more about the government than any other man in the country. Even more important is the fact that the sovereign's personal fortunes are less affected by party politics than those of other people, and that accordingly he can usually be depended on to take a dispassionate and impartial view of matters that stir heated controversy in Parliament and press. He, if anyone, can think in terms of the best interests of the nation as a whole.<sup>3</sup>

<sup>1</sup> See E. M. Sait and D. P. Barrows, *British Politics in Transition* (Yonkers, 1925), 18-22. The king may, of course, advise against a dissolution, as George V is understood to have done in September, 1931, when Prime Minister MacDonald and his associates in the emergency "national" government then in office were trying to decide upon the best course to pursue. See page 327 below.

<sup>2</sup> *English Constitution* (rev. ed.), 143.

<sup>3</sup> The influence exerted by successive sovereigns from George III to Victoria is

Kingship as a  
symbol of  
imperial  
unity

But the monarchy serves still other important uses. It furnishes a leadership for British society which, during the past century at all events, has had a generally good effect in matters of taste, manners, and morals. In an age of lightning change it lends a comfortable, even though a merely psychological, sense of anchorage and stability; "with the king in Buckingham Palace, people sleep the more quietly in their beds." More important than this, it provides a symbol of imperial unity which most Englishmen agree could not possibly be dispensed with. In India, in far-flung crown colonies, in protectorates, dwell multifold millions for whom political authority requires to be expressed in terms of tangible, visible personality. These people can summon up loyalty, and even devotion, to a king or a throne, but hardly to a "constitution," a "government," or other such abstraction. Not only this, but monarchy is now more than ever necessary as a link with the self-governing dominions. Before the World War, while Canada, Australia, and the rest had their own parliaments and cabinets, the parliament at Westminster was an Imperial Parliament, with power in every square foot of territory over which the British flag flew. Great structural changes, however (to be described in a later chapter<sup>1</sup>), have since brought it about that Parliament is only the Parliament of the United Kingdom, and that accordingly no constitutional bond of union whatsoever survives except the crown—which, as we have seen, absolutely presupposes a monarch in whose name the "powers of the crown" can be exercised. Break the golden link of empire furnished by royalty, and all that is left of the union of autonomous partners in the Commonwealth of Nations disappears. Hindu, Nigerian, New Zealander, Jamaican, Australian, Canadian, and the rest find in allegiance to the British throne their one common manifestation of imperial unity and feeling.

described at length in T. E. May and F. Holland, *Constitutional History of England*, I, Chaps. i-ii. Queen Victoria's activities are reviewed in J. A. R. Marriott, *The Mechanism of the Modern State*, II, 38-48. Cf. *The Letters of Queen Victoria*, second series, especially Vol. III, covering the period 1879-85 (London, 1928); J. A. R. Marriott, *Queen Victoria and Her Ministers* (London, 1933). The most satisfactory treatment of Edward VII on similar lines is Sidney Lee's memoir of the king, printed in the *Dictionary of National Biography*, Second Supplement (London and New York, 1912), I, 546-610. The second volume of Mr. Lee's *King Edward VII* (London, 1925-27) contains much interesting material. J. A. Farrer, *The Monarchy in Politics* (New York, 1917), is an excellent study of the general subject.

<sup>1</sup> Chap. XX below.

To all of these considerations must be added certain other weighty facts. (1) The continuance of kingship has been no bar to the progressive development of democratic government. If royalty had been found blocking the road to fuller control of public affairs by the people, it is inconceivable that all the forces of tradition could have pulled it through the past seventy-five or eighty years. (2) The royal establishment does not cost the nation much, considering the returns on the investment; in actual figures, the outlay is only about seven one-hundredths of 1 per cent of the total British budget. (3) The cabinet system, upon which the entire governmental order of Great Britain hinges, has nowhere been proved a workable plan without the presence of some titular head, some dignified and detached figure, whether a king or, as in France, a president with many of the attributes of kingship;<sup>1</sup> and nothing is clearer than that if monarchy were to be abandoned in Britain, provision would have to be made for a president or other "chief executive," raising all sorts of troublesome questions about his powers and entailing serious possibilities for the cabinet system itself.

Other considerations in the monarchy's favor

Thus it comes about that monarchy, although on its face a gross anachronism in a country like Britain, remains impreguably entrenched, being, indeed, like the weather, something that the average Englishman simply takes for granted. At a low ebb in popular respect a hundred years ago, because of a succession of weak or otherwise unworthy sovereigns, it has regained all that it had lost and is today indubitably popular. Such republican talk as one might have heard even a generation or two ago has died down. Throughout the stormy years 1909-11, when the nation was stirred as it had not been in decades on issues of constitutional reform, every proposal and plan took it for granted that monarchy would remain an integral part of the governmental system. In the general bombardment to which the hereditary House of Lords was subjected, hereditary kingship entirely escaped. In the early years of the World War, some criticism was directed at the royal family because of what

Little present sentiment in favor of a republic

<sup>1</sup> The republic of Estonia formerly had no titular chief executive, though since 1933 there has been a president-dictator. The *Länder*, or "states," of Austria have only chief ministers, as was also true of the German *Länder* before those political divisions lost their separate governments and passed under full control from Berlin. See p. 697 below. The problem of executive organization in such subordinate areas is not, however, analogous to that presented in large and sovereign states.

proved an ill-founded suspicion that the court was the source of influences antagonistic to republican institutions in allied or other friendly states. But the misunderstanding passed, and the years of feverish republican experiment on the Continent during and after the war left kingship as solidly buttressed in Britain as before. Of greatest significance is the fact that the Labor party, although long on record in favor of the abolition of the House of Lords, has never, as a party, advocated the suppression of British kingship. Individual Laborites have declared themselves republicans in principle; and at a party conference in 1923 a motion was introduced asserting that the royal family is no longer necessary as a part of the British constitution. This motion, however, was defeated by a heavy majority; and most Labor men, equally with Conservatives and Liberals, consider that as long as the sovereign is content with the sort of position that he occupies today—national and representative, rather than personal and privileged—the country will, and should, continue, as now, a “crowned republic.”<sup>1</sup> The only real dissenters are the Communists.

<sup>1</sup> In their *Constitution for a Socialist Commonwealth of Great Britain* (p. 61)—which, although never officially endorsed by the Labor party, gives a very good clue to Labor views on most subjects—Sidney and Beatrice Webb say: “If we pass from the constitutional theory of the text-books to the facts as we see them today, what we have to note is that the particular function of the British monarch—his duty as king—is not the exercise of governmental powers in any of its aspects, but something quite different, namely, the performance of a whole series of rites and ceremonies which lend the charm of historic continuity to the political institutions of the British race, and which go far, under present conditions, to maintain the bond of union between the races and creeds of the Commonwealth of Nations that still styles itself the British Empire.” The authors go on to say, however, that there are some present social disadvantages (tendency to snobbishness, etc.) in the existence of monarchy, and that unless they are removed, monarchy will become unpopular and perhaps “very quickly disappear” (p. 109, note).

Useful accounts of the sovereign's place in the governmental system include A. L. Lowell, *op. cit.*, I, Chap. i, and S. Low, *Governance of England*, Chaps. xiv–xv. M. MacDonagh, *The English King* (London, 1929), is a readable and informing volume.

## CHAPTER V

### THE MINISTRY AND THE CABINET

Full custody of the vast and growing powers of the crown has fallen, as we have observed, to the ministers. To a degree, the resulting duties are discharged by these officials acting singly in their several departments and offices; to some extent, they are performed collectively through the medium of the privy council and the cabinet; in large part, they are carried out with the help of the army of public employees known as the permanent civil service. Four chapters will now be devoted to some description of this widely ramifying apparatus and its workings.

The casual observer would hardly fix his attention first upon an agency of such apparent unimportance as the privy council. One who looked more closely, however, would find this curiously situated institution not only of rich significance historically but—after its own manner—of genuine consequence today; neither ministry nor cabinet can truly be understood without bringing it into the picture. Lineal descendant of the Great Council of the Norman-Angevin kings, it is the latest form of royal council known to the law; and though long since crowded from the center of the stage by the rise of the cabinet, it is still an instrumentality through which alone many kinds of cabinet decisions can be given effect. Nowadays, the council consists of some 320 persons. The archbishops of Canterbury and York and the bishop of London always belong to it, as likewise higher judges and retired judges. Many eminent peers (especially such as have held high administrative posts at home and abroad) are included; also a few colonial statesmen and varying numbers of men of high repute in literature, art, science, law, and other fields of endeavor, upon whom the crown has seen fit to confer membership as a mark of honor. Most councillors become such, however, by virtue of the practice of bestowing the distinction upon all members of every incoming cabinet. Indeed, since the cabinet as such is unknown to the law, it is only as a minister

The privy  
council

Membership

that a person can be legally placed in charge of a high government post and only as a privy councillor that he can be required to take the historic oath of secrecy which the deliberative and advisory aspects of the cabinet's functions are regarded as entailing. Once made a privy councillor, a man normally remains such for the rest of his life; so that the body always consists principally of present and past cabinet officers. A mark of distinction of all members is the title of Right Honorable.

#### Meetings

The rise of the cabinet system has left the council in a position such that aside from committee work—its services are largely of a formal character. But this does not mean that they are unimportant, or even unessential. Except when a new sovereign is to be crowned, or some other solemn ceremony is to be performed, the general body of councillors is never called together. The majority either have never possessed governmental functions or have long since ceased to exercise them; rarely is anyone invited to attend a council meeting who is not an active cabinet member—at all events a minister—and in actual practice not more than four or five members are summoned for the purpose.<sup>1</sup> But the meetings (20 or more a year) are meetings of the “privy council,” and all business is transacted in its name—more accurately, in that of “king-in-council,” since whatever is done is legally the work of the sovereign and councillors jointly, actually sitting together at Buckingham Palace or elsewhere.<sup>2</sup> The Lord President of the Council is always in attendance, and also the clerk of the council, who issues the summons, and who since 1923 has served also as secretary of the cabinet.

#### “Orders in council”

What is there for these meetings to do? As a matter of fact, several things. The council may indeed have no discretion concerning some of them; but at all events they can be done in no other way. It is, for example, at council meetings that all ministers take their oath of office. It is also there that sheriffs are formally appointed. By all odds the most important matter, however, is the issuing of rules and orders under the name of “orders in council.” As will appear later, increasing numbers of administrative rules and regulations are promulgated inde-

<sup>1</sup> Three suffice for the transaction of business.

<sup>2</sup> It has, however, been made possible in recent years for the council to function, under emergency conditions, without the sovereign's presence.



pendently by individual executive departments and other agencies.<sup>1</sup> But certain things are dealt with only through the medium of orders in council, and, in general, the more important orders, on whatever subject, are cast in this form. Prominent examples are proclamations summoning, proroguing, and dissolving Parliament; orders relating to the government of the crown colonies; orders granting royal charters to municipal corporations and other bodies; orders pertaining to the permanent civil service; war-time orders concerning such matters as neutral trade and blockade; and a great variety of orders issued in pursuance of authority conferred in more or less general terms in acts of Parliament dealing with such subjects as health and education. Of late, the total number of orders issued has been around 600 a year; in time of war, it runs considerably higher.

Be it noted, however, that the privy council is no longer a deliberative or advisory body. Its functions of this character have been absorbed to some extent by the departments, which have a good deal of leeway in determining not only what rules they shall severally promulgate, but what ones they shall carry to the council to be assented to and promulgated as orders. In larger degree, the council's earlier deliberative functions have passed to the cabinet. Upon matters of moment, this body deliberates and frames policy. If by their nature the decisions arrived at require parliamentary action, they are, of course, taken to Westminster. If, however,—as is frequently the case—orders in council will suffice, they are taken rather to the privy council. The cabinet decides that orders shall be given, or that the sovereign shall be advised to act in a certain manner. But it does not, as a cabinet, give orders; that is the business of the king-in-council, which has, to be sure, yielded most of its earlier deliberative and advisory functions, but nevertheless remains the ultimate executive authority.

Further evidence that the privy council still has vitality is supplied by the existence of a number of active and important council committees. Foremost among these is the judicial committee, created by statute in 1833, and serving as a great quasi-tribunal which renders final judgment (in the guise of advice to the crown) on all appeals from ecclesiastical courts, admiralty courts, and courts in India, the dominions, and the colonies.

The council  
not a deliberative body

Council  
committees

<sup>1</sup> See pp. 135-139 below.

There is an ancient non-statutory committee on the affairs of the Channel Islands, and statutory committees exist for the Scottish universities and the universities of Oxford and Cambridge. Several important administrative boards and commissions, furthermore,—for example, the Board of Trade and the Ministry of Education—originated as privy council committees.<sup>1</sup>

Ministry and  
cabinet dis-  
tinguished

It is manifest, however, that, whatever may have been true in earlier centuries, we must look beyond the privy council to discover the men and agencies that carry on the government at the present day; and the quest soon brings us to the ministry and the cabinet. The names of these two institutions are sometimes used interchangeably; but they denote parts of the government that are properly distinct from each other, and our first concern must be to see what the difference is. Broadly, the distinction is two-fold, according as it has to do with (1) composition and (2) functions. The ministry consists of the whole number of crown officials who have seats in Parliament, are responsible to the House of Commons, and hold office subject to the approval of the working majority in that body. It is this relation to Parliament—in other words, the *political* nature of their offices—that distinguishes those crown officials who are to be regarded as ministers from the far greater number who have no such character, but form, rather, the permanent civil service. Broadly, the ministers are those officers of the crown who have to do with the formulation of policy and the supreme direction of carrying it out. Yet this is not precisely true, because there are ministers who have very little to do with policy, and others who do not administer; which is tantamount to saying that the line which divides ministerial from non-ministerial offices has been drawn by usage, and even accident, not by logic. It is, furthermore, a shifting boundary, which leaves the number of ministerial posts, and hence of ministers, subject to continual fluctuation.

Composition  
of the min-  
istry

Looking over the list of ministers at any given time, one discovers four or five main groups or categories. The first is the heads, actual or nominal, of the principal government de-

<sup>1</sup> C. H. Tupper, "The Position of the Privy Council," *Jour. of Compar. Legis. and Internat. Law*, Oct., 1921; M. Fitzroy, *The History of the Privy Council* (London, 1928).

partments, *e.g.*, the Secretary of State for Foreign Affairs, the First Lord of the Admiralty, the Chancellor of the Exchequer, the Minister of Health, and the President of the Board of Education. Second, there are other high officers of state, who, however, are not in charge of departments, *e.g.*, the Lord Chancellor, the Lord President of the Council, and the Lord Privy Seal. Third, there are parliamentary under-secretaries. Not all under-secretaries in the departments and offices are parliamentary under-secretaries. There are permanent under-secretaries, who are not ministers, are non-political, and compose the top-most part of the permanent working staff, which is unaffected by the ups and downs of politics and the rise and fall of ministries. The parliamentary under-secretaries (of whom at least one will be found in every important department) are specially useful as spokesmen of their departments in the branch of Parliament in which the department head, in any particular case, does not have a seat.<sup>1</sup> A fourth small but important group of ministers consists of the government whips in the House of Commons. These are now four in number—a chief whip and three assistant whips. All serve as whips and draw salaries by virtue of holding certain other posts. But their actual work is chiefly as whips, and their salaries are justified mainly on the theory that by helping keep a quorum they enable supplies to be voted and the government to be kept running.<sup>2</sup> Finally, a few officers of the royal household, such as the Treasurer and the Vice-Chamberlain, are still regarded as having a political character, and hence are ranked as ministers. Before the World War, the ministry as a rule numbered from 50 to 60. Between 1914 and 1919, the creation of new departments and offices, made necessary by war-time conditions, raised the total to above 90. Post-war retrenchment and reorganization has, however, brought it down again (in 1933) to 64.

The cabinet is quite a different matter. It consists at any given time of such members of the ministry as the prime minister (who is head of ministry and cabinet alike) invites into the select

Composition  
of the  
cabinet

<sup>1</sup> British usage, unlike that in Continental countries having cabinet governments, permits a minister to speak only in the house to which he belongs. It is always desirable to have a spokesman also in the other house, and parliamentary under-secretaries are appointed with this in view.

<sup>2</sup> There are also opposition whips. But they are unpaid, and of course do not belong to the ministry.

circle. All cabinet members are ministers, but not all ministers are cabinet members. One should hasten to add that in deciding upon the composition of his immediate official family the prime minister has considerably less option than the foregoing statement might be taken to imply, because certain of the ministers occupy posts of such functional or historical importance that they can never be left out.<sup>1</sup> Such are the First Lord of the Treasury, the Chancellor of the Exchequer, the First Lord of the Admiralty, the eight "principal secretaries of state,"<sup>2</sup> and (on grounds of prestige) the Lord President of the Council and the Lord Privy Seal. In all, the incumbents of as many as 12 or 14 positions may regularly expect cabinet membership. Beyond this, it is for the prime minister to decide who shall be included, and in doing so he will be influenced by the aptitudes and susceptibilities of the remaining ministers, the importance of a given office at the moment, party interests, and even principles of geographical distribution.

Increased  
size

Like the ministry as a whole, the cabinet has never had a fixed number of members; and in both cases there has been a gradual increase, both in absolute numbers and in the proportion of the members drawn from the House of Commons. Eighteenth-century cabinets contained, as a rule, not above seven to nine persons. In the first half of the nineteenth century, the number ran up to 13 or 14; the second cabinet presided over by Lord Salisbury, at its fall in 1862, numbered 17; and most of the time from 1900 to 1914 there were 20 members. The causes of this increase included pressure from ambitious statesmen for admission, the growing necessity of giving representation to varied elements and interests within the dominant party, the multiplication of state activities which called for the creation of new and important departments, and the desire to give every major branch of the administrative system at least one representative. An inevitable effect was to make the cabinet a somewhat unwieldy body, and from early in the present century there has been not only a steadily growing use of subcommittees but a tendency

<sup>1</sup> Except under abnormal circumstances such as attended the creation of the "war cabinet" of 1915 and the MacDonald "national cabinet" of 1931. See pp. 327-328 below.

<sup>2</sup> These head the Foreign Office, the Home Office, the War Office, the Dominions Office, the Colonial Office, the India Office, the Ministry for Air, and the Scottish Office.

toward the emergence of a small inner circle bearing somewhat the same relation to the whole cabinet that the early cabinet had itself borne to the overgrown royal council. This trend was viewed with apprehension by some people who feared that the concentration of power in the hands of an "inner cabinet" would not be accompanied by a corresponding concentration of responsibility. British and foreign observers, however, agreed that the cabinet—normally almost twice as numerous as the French and German—had come to be too large for the most effective handling of business.

The World War furnished opportunity for an interesting experiment with a really small cabinet, although, of course, under highly abnormal circumstances. To be sure, the steps first taken were in the opposite direction; for a coalition cabinet, with 23 members, organized by Mr. Asquith in the spring of 1915 was the largest in the country's history. Experience soon showed that a cabinet of such proportions was incapable of the prompt and decisive action demanded by the emergency, and in December, 1916, when Mr. Asquith yielded leadership to Mr. Lloyd George, a new "war cabinet" was called into being, consisting of only five persons—one Liberal, one Labor member, and three Conservatives. One of the five was burdened with the chancellorship of the exchequer, but the other four were left free to devote all of their time to shaping national policies for the period of crisis. Throughout the remaining war years, this emergency cabinet, increased in 1917 to six members (with an occasional seventh) wielded the powers of an autocrat. It, of course, acknowledged responsibility to the House of Commons in a general way. But to all intents and purposes it was independent of control, and nothing short of a national convulsion could have overthrown it. Shorn of initiative, and depleted by war service, Parliament became little more than a machine for registering executive edicts. The bulk of the ministers practically stopped attending the sittings, partly because they were pressed to the limit with administrative work and partly because the proceedings were so perfunctory that there was no point to taking part in them; many ministers, indeed, were not even members. All this was well enough as long as hostilities lasted. But as soon as the armistice was declared, criticism of the war cabinet as an intolerable "junta" broke forth, coupled with demand for a return to something like the old arrangements; and

The "war cabinet"  
1915-19

in midsummer of 1919 Mr. Lloyd George and his colleagues bowed to the inevitable.<sup>1</sup>

Futile effort  
to keep the  
membership  
small

The contemplated reconstruction raised, however, some difficult questions. How many members should the reorganized cabinet be permitted to have? Should the recently introduced practice of keeping systematic records and making formal public reports be continued? <sup>2</sup> Should the coalition principle be adhered to, or should the policy of party solidarity be revived? Especially baffling was the matter of numbers. Even if only the ministers who were heads of departments were brought in, there would now be at least 30 members. But pre-war cabinets had never contained more than 22; that number had usually been considered too large; the experiences of 1914-16 had vividly demonstrated the disadvantages of a large cabinet; and a "machinery of government" committee set up by the Ministry of Reconstruction was urging that for the proper performance of its functions the cabinet should consist of not more than 12—indeed, preferably 10—members. Mr. Lloyd George's own idea was that only 12 of the most important department heads should be admitted, which would mean a cabinet of the same size as that over which Disraeli presided in 1874-80. He found it impossible, however, to keep within this limit, and as the new cabinet gradually took form in October, 1919, it steadily approached the proportions of pre-war days and finally attained a membership of 20. At no time thereafter did the number fall below 19 except in 1931 when Ramsay MacDonald, organizing his emergency "national" cabinet, reduced it temporarily to 10.<sup>3</sup>

Functional  
differences  
restated

In personnel, as we have seen, ministry and cabinet differ, that the latter is an inner circle of the former, comprising in these days, something like a third of the larger group. Functionally, they differ in that whereas ministers as such have duties only as individual officers of administration, each in his particular portfolio or less important station, cabinet members have collective obligations, *i.e.*, to hold meetings, to deliberate, to decide upon policy, and in general to "head up" the government. They also play the most important rôle in the leadership of their party. Of

<sup>1</sup> On the war cabinet, see R. Schuyler, "The British War Cabinet," *Polit. Sci. Quar.*, Sept., 1918, and "The British Cabinet, 1016-1010," *ibid.* Mar. 1920.

<sup>2</sup> See p. 111 below.

<sup>3</sup> See p. 327 below.

course, all cabinet members are also ministers—"cabinet ministers," they are sometimes called; and as such they (or most of them), like the rest, have departments to administer or other ministerial work to do. But the ministry as such never meets; it never deliberates on matters of policy; it is, indeed, misleading to speak of it as a "body" at all. In sum, the cabinet officer deliberates and advises; the privy councillor decrees; and the minister executes. The three activities are easily capable of being distinguished even though it frequently happens that cabinet officer, privy councillor, and minister are one and the same person.

Before going farther, however, into functions and methods of work it will be well to take some account of the way in which matters are arranged when a cabinet retires and a new one is to be installed in its stead. At the outset, be it noted that at such a juncture the ministry also resigns. Ministry and cabinet stand or fall together, even though the non-cabinet ministers may personally have had no part in creating the situation which made a change necessary. This is not illogical, because as a rule the shift comes on account of the cabinet losing the confidence of the House of Commons, and the ministers, after all, belong to the party whose leaders are yielding control. They are "political" officers, and they accepted their posts in full knowledge that their fortunes would be bound up with those of their more important colleagues. Even if a change of party control is not involved, however, the rule applies; although in such a case the greater part of the ministers, of all grades, will promptly be put back in their old positions. To ask how a new cabinet is made up is therefore tantamount to inquiring how a new ministry is brought into existence.

Ministry  
and cabinet  
resign to-  
gether

The first step is the selection of the prime minister; for he is the head equally of both groups. And this brings us to the official who is by all odds the most powerful and important in the entire government—the only one who is worthy of being compared in these respects with the president in our American system. For some time after the cabinet took its place as an accepted part of the machinery of government, its members recognized no superior except the sovereign, who as a rule supplied all of the leadership that was needed. But when, after 1714, the king stopped attending meetings and ceased in other respects to have much to do with the government, the group found itself leaderless, with the result that a sort of presidency developed from within its own member-

Making up a  
new ministry

ship. In time, what was hardly more than a chairmanship grew into a thoroughgoing leadership—in short, into the prime minister's position as we behold it today. It is commonly considered that the first person who discharged the functions of prime minister in the modern sense was Sir Robert Walpole, first lord of the treasury from 1715 to 1717 and from 1721 to 1742. The term "prime minister" was not yet in general use; Walpole disliked the title and refused to allow himself to be called by it. But that the function, or dignity, truly enough existed, there is an abundance of contemporary evidence to show. By the time of the ministry of the younger Pitt, organized in 1783, the prime minister's place among his colleagues as *primus inter pares* not only was an established fact but was accepted as both inevitable and proper. The essentials of his position may be regarded as substantially complete when, during the later years of George III, the rule became fixed that in making up a new ministry the king should simply receive and endorse the list of nominees prepared and presented by the premier.<sup>1</sup>

Designating  
the prime  
minister

We have already said that one of the important acts which the king still performs is the naming of the prime minister; and, truly enough, when a premier goes to Buckingham Palace and places his resignation (along with that of his colleagues) in the king's hands, the sovereign calls another political leader to the Palace and commissions him to make up a ministry—which is tantamount to appointing him prime minister. In earlier days, the king was likely to have some real choice in the matter; he could select as well as appoint. The person designated must, of course, be a party leader who presumably could make up a ministry that would command a parliamentary majority. He must, as Gladstone put it, be chosen "with the aid drawn from authentic manifestations of public opinion." But there might be two or three, or even half a dozen, eligibles; and the king could make his selection among them. The crystallization of the two-party system, however, coupled with the growth of party machinery, brought it about that each party almost always had a chosen and accepted leader, with the result that when one party went out and the other came in, the sovereign could not do otherwise than call upon the

<sup>1</sup> The rise of the prime-ministership is described more fully in J. A. R. Marriott, *The Mechanism of the Modern State*, II, 71-76. Curiously, no systematic history of the office has ever been written.



leader of the incoming party, however much his personal preferences might run in a different direction. : On certain occasions—notably in 1852 and 1859—Queen Victoria determined by her personal choice which of two or more prominent members of the dominant party should be placed at the head of a new ministry. But she failed in 1880 to prevent Gladstone from becoming premier, although she strongly preferred Lord Hartington or Lord Granville; and never in the past sixty years has the sovereign been in a position to make a real choice. The emergence of Labor as a major party has, indeed, created a situation suggesting interesting possibilities. Two occasions have already arisen (in 1924 and 1929) on which no one party had a majority in the House of Commons, and it is conceivable that in such a situation the sovereign might have a chance to decide which of at least two party leaders should be entrusted with the premiership. The task might well prove onerous, and the decision fraught with weighty consequences. Few things are better assured, however, than that even in the contingency mentioned advice would reach the king which would mark out the proper path for him to take, and that no monarch in twentieth-century Britain would risk rocking the throne to its foundations by insisting upon a choice of his own as against one that could be made for him.<sup>1</sup>

Who, then, actually selects the prime minister? The answer is two-fold: the House of Commons, or the country at a general election, brings the party into power; the party has the man in readiness—a man, be it noted, who has been chosen party leader, not by the rank and file of the party throughout the country, but by the party members in the House of Commons (along with usually a few other men of prominence in the party) in caucus assembled. If by any chance the party does not have the man in readiness when the call comes, it takes prompt steps to single him out. Thus, when, in 1894, Gladstone somewhat precipitately retired from office on account of physical infirmity, the Liberals in Parliament canvassed the question of whether the successor

How the  
prime minister  
is actually  
selected

<sup>1</sup> As a matter of practice, the prime minister who is retiring suggests to the king the person marked out by the political situation to be successor. This, however, does not prevent the sovereign from "feeling out" the situation directly by talking with other persons involved in it, at all events if (as in 1924) there is some question as to the decision that ought to be reached. On the entirely different conditions confronting the titular head of the state in France (and other Continental countries as well), see pp. 496-497 below.

should be Sir William Vernon Harcourt or Lord Rosebery. They—more truly the cabinet—chose the latter, and he was forthwith appointed by the queen.<sup>1</sup> He happened to be her personal preference, but that was not the deciding factor. Again, in 1922, when the Lloyd George coalition ministry resigned, Mr. Bonar Law accepted the premiership only tentatively until he should have been elected Conservative leader in succession to Mr. Austen Chamberlain, who had refused to break with Mr. Lloyd George.<sup>2</sup>

The task of  
selecting the  
other minis-  
ters

The premier, duly commissioned, proceeds to draw up a list of ministers, deciding what post each shall occupy, and, in cases where there is room for doubt, whether this man or that shall be invited into the cabinet. Theoretically, he has a free hand. In no direct way does Parliament control either his selection of men or his assignment of them to places; and he can be sure that whatever list he carries to Buckingham Palace will receive the routine though indispensable—assent of the king. Practically, however, he works under the restraint of numerous precedents and usages, to say nothing of the conditions imposed by the immediate party and public situation. He cannot be guided solely by his personal likes and dislikes; on the contrary, he must consult with this ambitious (perhaps unpleasantly aggressive) party leader, sound out that man for whom no place can be found except of a minor and perhaps otherwise undesirable sort, and plead with A. to come in and explain to B. why he must stay out, and so at last arrive at a list which will have the requisite qualities of prestige and coherence, even though a product, from first to last, of compromise. It is rarely as difficult to make up a ministry in Britain as it is in France and certain other Continental states, where ministries are always coalitions, and where not only the ministerial group itself but also the party *bloc* which is to support it has to be built up out of more or less jealous and discordant elements. In Britain, too, the statesman who is called upon to organize a ministry is apt to have ample time in which to lay his plans, not only because a change of ministries can usually be foreseen with reasonable certainty a good while in advance, but also because the premier-to-be has known all along that whenever the change comes it will be he, and no one else,

<sup>1</sup> A. G. Gardiner, *Life of Sir William Harcourt* (London, 1923), II, Chap. xv.

<sup>2</sup> See p. 321 below.

who will have to handle the situation. Consequently, the making up of the new ministry is, as a rule, a matter of only a few hours. Even so, it is a task of much delicacy—"a work," as Disraeli once said, "of great time, great labor, and great responsibility." The prime minister is fortunate who accomplishes it without incurring embarrassment for himself or his party.

What are some of the rules, traditions, and practical considerations that the makers of ministries find it necessary to take into account? The first is that all ministers must have seats in one or the other of the two houses of Parliament. This does not mean literally that every man<sup>1</sup> appointed to a ministerial post must at the time be actually in Parliament. If there is strong desire to include a person who does not belong to either house—and the reasons may arise either from party expediency or from general public advantage—he may be named, and may enter provisionally upon the discharge of his duties. But unless he can qualify himself with a seat, either by election to the House of Commons or (in cases of special urgency) by being created a peer, he must give way in a brief time.<sup>2</sup> With rare exceptions, therefore, the prime minister selects his men from the existing membership of the two houses. Parliament once unwisely undertook, in the Act of Settlement of 1701, to make it impossible for ministers, as well as other officers under the crown, to sit in the House of Commons. But before the time came for the restriction to take effect the legislation was so modified, by the Security and Place Acts of 1705-07, as not to put any serious impediment in the way of ministers sitting in the popular chamber.

The substitute plan adopted was that while members of the House of Commons might accept appointment by the crown to "older" ministerial posts, *i.e.*, those created before 1705, they

Membership  
in Parlia-  
ment as a  
prerequisite

<sup>1</sup> Or woman; because nowadays there are occasionally female ministers. Miss Margaret Bondfield was the first such, in the capacity of parliamentary secretary to the Ministry of Labor in the MacDonald government of 1924. In the second MacDonald government, formed in 1929, Miss Bondfield was assigned the post of minister of labor, thus becoming the first woman to sit in a British cabinet.

<sup>2</sup> The matter is usually handled through an arrangement, engineered by the prime minister, by which a loyal party member gives up his seat, thus opening the way for a by-election at which the provisional minister is voted into Parliament by his adopted constituents. The retiring member may be rewarded for his sacrifice by appointment to an office not requiring membership in Parliament, or even by a peerage.

should remain members only if they vacated their seats, submitted themselves to their constituents for reelection, and were duly returned.<sup>1</sup> The theory behind this provision was that the voters should have an opportunity to say whether they were willing to be represented in Parliament by a man who held an office under the crown, and who therefore might be divided in his loyalties. And though the continued growth of parliamentary at the expense of royal power eventually robbed this consideration of all practical importance, the rule survived intact until a short time ago. The restriction applied only, be it noted, to ministerial posts antedating 1705. In the case of such positions by far the greater number—created after that date, it became usual to make special statutory provision permitting the holder to sit in the House without submitting himself for reelection. Like many other rules, the requirement of reelection as applied to the older offices was suspended (three different times, in fact) during the World War; in 1919, a *Re-election of Ministers Act* so far rescinded it as to relieve members from vacating their seats if they accepted ministerial office "within nine months after the issue of a proclamation summoning a new parliament"; and finally, in 1926, an amending measure brought the old requirement completely to an end. A member of the House of Commons may now, therefore, accept any place whatsoever in the ministry without necessity of seeking reelection.<sup>2</sup>

Distribution  
between the  
two houses of  
Parliament

Every ministry since the early eighteenth century has contained members of both the House of Commons and the House of Lords; even Mr. MacDonald found places for four peers in his Labor cabinet of 1924 and four in that of 1929. Indeed, a law which forbids more than six of the eight "principal secretaries of state" to sit in either house at the same time in effect necessitates some distribution between the two; and inflexible custom requires the Chancellor of the Exchequer to be a member of the House of Commons and the Lord Privy Seal, the Lord Chancellor, and the Lord President of the Council to belong to the House of Lords. Beyond this, there is no positive requirement,

<sup>1</sup> It was not essential, of course, that the minister be returned from the same constituency that he previously represented.

<sup>2</sup> In pursuance of the principle of separation of powers, the Constitution of the United States has from the first prescribed that "no person holding any office under the United States shall be a member of either house during his continuance in office." Art. I, § 6, cl. 2.

in either law or custom; although there is a feeling that the Home Secretary should be in the House of Commons, and also an idea that the Foreign Secretary may most appropriately be in the House of Lords, where he will be less disturbed with embarrassing questions than in the popular chamber. To fill the various posts the premier must bring together the best men he can secure—not necessarily the ablest, but those who will work together most effectively—with only secondary regard to whether they belong at one end of Westminster Palace or at the other. An important department whose chief sits in the House of Commons is usually represented in the House of Lords by a parliamentary under-secretary, and vice versa.

Since the days of Walpole, who was himself a commoner, the premiership has been held approximately half of the time by commoners and half of the time by peers. Lord Rosebery (1894–95) and Lord Salisbury (1895–1905) were, however, the last premiers who sat in the upper house, and it is now generally agreed that enforced absence from the House of Commons, the principal theater of legislative and other activity, imposes an almost fatal handicap. Peerages for retired premiers are deemed fitting; witness the titles conferred on Mr. Balfour and Mr. Asquith. But possession of a peerage militates against attaining the premiership; witness Lord Curzon, who, in part at least on this account, was passed over in 1923 in favor of Mr. Baldwin. Distribution of other ministers between the two houses has varied greatly, with, however, a steady tendency since the early nineteenth century to an increased proportion of commoners. Within the cabinet, as distinguished from the ministry as a whole, members of the two houses were usually about equally numerous at the middle of the century; but of late commoners have preponderated, although not decisively (except in Labor cabinets). Peers have usually been more numerous in Conservative than in Liberal cabinets.<sup>1</sup>

A second general rule or principle which the incoming prime minister must observe in making up both a ministry and a cabinet is that of party solidarity. William III set out to govern with a cabinet in which Whigs and Tories were deliberately inter-

The principle  
of party soli-  
darity

<sup>1</sup> For an interesting analysis of the social and other backgrounds of cabinet ministers, see H. J. Laski, "The Personnel of the English Cabinet. 1801–1924," *Amer. Polit. Sci. Rev.*, Feb., 1922.

mingled. The plan did not work well, and during his reign and that of Queen Anne it was gradually abandoned in favor of cabinets made up with a view to party homogeneity. To the end of the eighteenth century, men of differing political affiliations were indeed occasionally cabinet colleagues, as, for example, in the case of the famous "coalition" of Fox and North in 1783. But gradually the conviction took root that in the interest of unity and efficiency the political solidarity of the cabinet group is indispensable. The last occasion (prior to the World War) upon which it was proposed to make up a cabinet from utterly diverse political elements was in 1812. The scheme was abandoned, and from that day to 1915 cabinets were regularly composed, not always exclusively of men identified with a single political party, but at all events of men who were in substantial agreement upon the larger questions of policy, and who expressed willingness to coöperate in carrying out a given program. From 1915 to 1922 the country experimented with coalition governments; and under war-time conditions they were useful, if not essential. The experience, however, left the majority of Englishmen hating the principle of coalition, and nowadays, as before, it is taken for granted that a new premier will normally draw his ministerial timber entirely, or practically so, from the resources of his own party. "The party spirit," remarks a recent writer, "is the driving force of the whole machine."<sup>1</sup>

Other considerations which the prime minister must take into account

In selecting his co-laborers, the prime minister works under still other practical limitations. One of them is the well-established principle that surviving members of past ministries of the party, in so far as they are in active public life and desirous of appointment, shall be given preferential consideration. There are always a good many of these veterans of the Front Opposition Bench, and as a rule they want to get back into office. At all events, they would be offended if not given an opportunity to do so when their party returns to power. Then there are the young men of the party who have made reputations for themselves in Parliament, and consequently have claims to recognition. A certain number of them must be taken care of. After all, the party will need leaders in years to come—men who have

<sup>1</sup> R. Muir, *How Britain Is Governed*, 85. The emergency "national" ministry formed by Ramsay MacDonald in 1931 afforded another exception, but in no wise changed the general attitude on the subject. See pp. 327-329 below.

had long experience in official life—and its ministerial personnel must be continuously recruited from the ranks. Regard must be had also for geographical considerations; there must be ministers not only from England but from Scotland, North Ireland, and Wales. Different wings of the party must be given representation; disaffected elements must be placated. Social, economic, and religious groupings throughout the nation must be borne in mind. Other things being equal, too, men must be chosen who are good debaters, able platform speakers, and popular with the electorate.<sup>1</sup>

By no means the smallest difficulty is that of assigning the ministers to individual posts in a reasonably appropriate way, and so that all will be at least moderately satisfied. The first question is as to the post which the prime minister himself shall occupy. He, of course, has his choice; he is first in the field. He is not, indeed, obliged to take a post at all—save for one consideration, namely, that he will draw no salary as prime minister, but only as incumbent of one of the legally recognized salaried positions.<sup>2</sup> This being the case, his object—in view of the arduous character of the duties which will fall to him simply as chief minister—is usually to find a position which has dignity and prestige but does not entail much administrative work. Such a post was long ago discovered in the first lordship of the treasury. As will be pointed out later, it is specially appropriate for the actual head of the government to occupy a Treasury position;<sup>3</sup> and with few exceptions, the prime ministers of the past half-century have done so. One of the exceptions was Lord Salisbury, whose keen interest in international affairs led him to take upon himself (in 1887-92) the heavy burden of the Foreign Office. Another was Ramsay MacDonald, who occupied the same post during his first premiership (in 1924), partly because of the paramount importance of international problems at that juncture,

Distribution  
of posts  
among the  
ministers

The pressure from aspirants is such that Lord Salisbury, when on one occasion engaged in making up a ministry, was heard to say of the principal Conservative club in London that it resembled nothing so much as "the Zoological Gardens at feeding-time."

<sup>2</sup> The salaries of ministers range from £2,000 to £5,000 a year. Posts of the grade which the prime minister invariably occupies pay £5,000. Ministerial salaries are not included in the Civil List (see p. 71), and, being voted by Parliament every year, are subject to change at will. In addition to their salaries, the Attorney-General and a few other ministers receive certain fees.

<sup>3</sup> See p. 151 below.

and partly because he had a wider acquaintance abroad and was better versed in diplomatic matters than any of his colleagues.<sup>1</sup>

The prime minister's problem is not so much, however, the selection of his own post—usually that is no problem at all—as the placing of the other ministers, and especially the cabinet members. Two or more of them may want, and have equally good claim to, the same position; some may insist upon having posts for which they are deemed not best fitted; <sup>2</sup> some, on the other hand, may be reluctant to take places of specially arduous or hazardous character for which they have been singled out; some, when offered the only thing that is left for them, will refuse in language that will leave the harassed premier, as Gladstone once remarked, “stunned and out of breath.” In the expressive simile of Lowell, the prime minister's task is apt to be “like that of constructing a figure out of blocks which are too numerous for the purpose, and which are not of shapes to fit perfectly together.” <sup>3</sup> He will have to display much patience and tact, often in the end subordinating his own preferences to the inclinations and susceptibilities of his future colleagues.

Formal appointment and announcement

The list finally completed, or at least substantially so, the prime minister submits it to the king, by whom, in law, the final appointments are made; and an announcement forthwith appears in the official publicity organ of the government, the *London Gazette*, to the effect that the persons listed have been chosen by the crown to occupy the posts with which their names are bracketed. There is no mention of the cabinet; for the cabinet is unknown to the law, and nobody is ever officially named to it, as such. The logic of the political situation is, however, usually so plain that enterprising gentlemen of the press have pretty well guessed in advance who the members of the cabinet

<sup>1</sup> Gladstone, on two occasions, combined the chancellorship of the exchequer with the prime-ministership. Pitt and Canning, in their respective days, held the same two posts simultaneously, as did also Stanley Baldwin for a few months in 1923.

<sup>2</sup> When, for example, the second Labor government was made up in 1929, Mr. MacDonald did not want Mr. Arthur Henderson at the Foreign Office, but was nevertheless obliged by the latter's insistence to place him there.

<sup>3</sup> *Op. cit.*, I, 57. Cf. M. MacDonagh, *Book of Parliament*, 148-183. On the ministers as amateurs, see pp. 143-145 below.



will be and in what particular office this statesman and that will find his chance to serve the country.<sup>1</sup>

<sup>1</sup> The process of making up a ministry and cabinet is commented on from various angles in A. L. Lowell, *op. cit.*, I, Chap. iii; W. R. Anson, *Law and Custom of the Constitution* (3rd ed.), II, Pt. i, Chap. ii, *passim*; and H. Finer, *Theory and Practice of Modern Government*, II, Chap. xxii. Much interesting information will be found in C. Bigham, *The Prime Ministers of Britain, 1721-1921* (London, 1922). A complete list of prime ministers since 1721 is printed in *Const. Year Book* (1928), 75, and of ministries since 1824, with the principal members of each, in *ibid.*, 76-78.

## CHAPTER VI

### THE CABINET AT WORK

The cabinet's  
importance

Writers on the British constitution have employed many colorful phrases to suggest the importance of the cabinet. Bagehot terms it "the hyphen that joins, the buckle that binds, the executive and legislative departments together"; Lowell calls it "the keystone of the political arch"; Sir John Marriott refers to it as "the pivot round which the whole political machinery revolves"; Ramsay Muir speaks of it as "the steering-wheel of the ship of state." It is true that Gladstone found the center of the British system, "the solar orb round which the other bodies revolve," in the House of Commons; ~~that~~ Sidney Low reminds us that "from the legal point of view, the cabinet is only a committee of the privy council, and its members merely 'His Majesty's servants'"; and that Sidney and Beatrice Webb, in their illuminating comments on the existing political order, assert that "the government of Great Britain is in fact carried on, not by the cabinet, nor even by the individual ministers, but by the civil service." Nevertheless, as we shall see, the cabinet has grown steadily in power at the expense of the House of Commons since Gladstone wrote;<sup>1</sup> and neither the cabinet's lack of independent legal status nor the indispensable rôle played by the civil servants in carrying forward the work of government day by day makes it any less true that, from whatever angle approached, the cabinet looms as the central figure in the picture.

The cabinet  
as working  
executive

On the one hand, the cabinet is the working executive. Its decisions and the advice tendered the crown in pursuance of them set in motion the departments of government concerned; and if we be reminded that the commands which lead to action frequently emanate from the king-in-council, we have only to recall that "king-in-council"—however distinct in the eye of the law—means, to all intents and purposes, the cabinet. It is within the cabinet circle that national policies are framed,

<sup>1</sup> See pp. 291-301 below.

and it is the cabinet ministers, aided by their colleagues and subordinates in the several departments, that carry these policies, and the laws of the land generally, into effect. The cabinet is as truly the executive in Britain as is the president in the United States.

A hundred years ago, the cabinet, indeed, drew its importance mainly from its executive functions. Since 1832, however, it has come to have so much to do with legislation that a careful observer has been moved to remark, without a great deal of exaggeration, that it is the cabinet that legislates with the advice and consent of Parliament. The fact that cabinet members have seats in one or the other of the two houses is, of itself, the least important aspect of the matter. The main consideration is that—as will be explained more fully when we come to deal with the processes of legislation—the cabinet ministers guide and control the work of Parliament, in both branches, in a fashion with which there is nothing to compare in the United States, and in a measure unparalleled even in France, Belgium, and other cabinet-government countries.<sup>1</sup> They prepare the Speech from the Throne in which the condition of national affairs is reviewed and a program of legislation set forth at the opening of every parliamentary session; they formulate, introduce, explain, and urge the adoption of legislative measures upon all manner of subjects; and although bills may be presented in both houses by non-ministerial members, measures of a controversial nature, or of importance for any other reason, rarely receive serious attention unless they have originated with, or at all events have the active support of, the cabinet. For weeks at a stretch, the cabinet demands, and is allowed, practically all of the time of the House of Commons for the consideration of the measures in which it is interested. In short, the cabinet ministers make decisions and formulate policies on all weighty matters requiring attention, and ask of Parliament only that it take whatever action is requisite to make these decisions or policies effective. So essential is it that the ministers have the confidence and support of the popular legislative branch that normally any serious rebuff or check at its hands leads forthwith to a readjustment designed to restore harmony, *i.e.*, a change of ministry, or even the election of a new House of Commons.

The cabinet  
and legisla-  
tion

<sup>1</sup> See Chap. XXVI below.

The cabinet has sometimes been described as a committee of Parliament—a committee chosen, as Bagehot bluntly puts it, to rule the nation. It is, of course, not a committee in any ordinary sense. Parliament does not appoint it; and, far from having bills referred to it like a committee of the usual sort, it is itself the originator of most bills that assume much public importance. Nevertheless, its members are drawn from the membership of Parliament, and they constitute a sort of parliamentary inner group or circle recognized and accepted as an agency of leadership—endowed, it is true, with large initiative, but yet deriving its power primarily from its parliamentary setting or connection. Allowing for exceptional intervals such as the eclipse of the bi-party system has produced in the past decade, the basic feature of the system is rule by party majority; and within the party majority the power that governs—in party matters and in public affairs alike—is the cabinet. As Lowell puts it, the governmental machinery “is one of wheels within wheels; the outside ring consisting of the party that has a majority in the House of Commons; the next ring being the ministry, which contains the men who are most active within that party; and the smallest of all being the cabinet, containing the real leaders or chiefs. By this means is secured that unity of party action which depends upon placing the directing power in the hands of a body small enough to agree, and influential enough to control.”<sup>1</sup>

The cabinet and the principle of ministerial responsibility

Under what conditions, and by what methods, does the cabinet perform its multifarious tasks? First of all, it is limited and guided at all times by the inescapable rule of ministerial responsibility. This responsibility is of two kinds, which may be termed legal and political. Legal responsibility is that which arises from the principle that every act of the crown must be countersigned by at least one minister, who can be held liable in a court of law if the thing done can be shown to be illegal. This principle is a part of the law of the constitution—unwritten, indeed, but nevertheless law. The other, or political, form of responsibility is that which lies in the direction of the House of Commons. This responsibility is the essence of the cabinet,

<sup>1</sup> *Government of England*, I, 56. The place of the cabinet in the governmental system as a whole, and especially the causes and results of the cabinet's greatly increased powers in recent times, will be described more fully in Chap. XV below.

or parliamentary, system, which, in turn, is Britain's principal contribution to modern political practice. What does such responsibility mean? Simply that every minister—whether or not in the cabinet—is answerable individually to the popular branch of Parliament for all of his public acts, and that the ministry—consequently the cabinet—can be held to account collectively, not only for its policies and actions as a group, but for any word spoken or any act performed by any one of its members in his public capacity. Being “answerable” and “held to account” is no mere form or gesture; it means that one or all of the ministers can at any time be forced out of office by a displeased or censorious House. This is not a matter of law, written or unwritten. A minister or a cabinet might cling to office in supreme indifference to a hostile House of Commons, and the courts would take no cognizance of the fact. But custom almost two hundred years old is behind the principle that cabinets and individual ministers alike shall remain in power only so long as they enjoy the confidence of the country, as manifested through the support of the House of Commons; and no convention of the constitution is more firmly established or cheerfully obeyed.<sup>1</sup>

In remoter centuries—before the cabinet system arose—the only means by which ministers could be made completely answerable to Parliament was impeachment. This, however, was a clumsy and hazardous device, not often called into play, and usually entailing tumultuous proceedings and other disagreeable consequences. After 1689, the altered relation between king and Parliament threw greatly increased powers into the hands of the ministers, and at the same time left them more exposed to parliamentary criticism. The situation no longer called for mere occasional proceedings to oust a minister because of some peculiarly offensive act or policy on his part; rather, it presumed a continuous relationship of responsibility, grounded upon a sort of “gentleman's agreement” to the effect that if the minister (no longer the *king's* minister, except in name) could not keep the respect and support of a House of Commons majority, he should have the good sense and common decency to resign. In the eighteenth century, this principle fully established itself, and as a result impeachment, so far as min-

Individual  
gives way to  
collective re-  
sponsibility

<sup>1</sup> Naturally, some cabinets are more thick-skinned toward criticism than others.

isters were concerned, became a thing of the past.<sup>1</sup> For a time, responsibility continued to be purely, or at least mainly, a personal, or individual, matter. A minister—even a cabinet member—might be forced out without affecting the tenure of his colleagues. The first cabinet, indeed, to bow as a body before a hostile House of Commons was that of Lord North, in 1782. Eventually, however, the cabinet developed such a degree of solidarity that the rule came to be, as it now is, that members of the cabinet circle—and, of course, of the ministry as a whole—should stand or fall together; and not since 1866 has a cabinet officer retired singly as a result of a hostile parliamentary vote. If an individual minister falls into serious disfavor, one of two things almost inevitably happens. Either he is persuaded by his colleagues to change his course or to resign before formal parliamentary censure shall have been visited upon him, or the cabinet as a whole rallies to his support and stands or falls with him.

Modes of enforcing responsibility

There are at least four ways in which a ruling majority in the House of Commons may manifest its displeasure with a cabinet, and thus bring to a head the question of its continuance in office. It may pass a simple vote of "want of confidence," thereby expressing disapproval of general policy. It may pass a vote of censure, criticizing the cabinet, or some member thereof, for some specific act. It may defeat a measure which the cabinet has sponsored and refuses to abandon. Or it may pass a measure but amend it in ways that the ministers are unwilling to accept. The cabinet is not obliged to pay any attention to a hostile vote in the House of Lords; but when any one of the four forms of action enumerated is taken in the popular chamber, the prime minister and his colleagues must normally do one of two things: resign or appeal to the country. If it is clear that the cabinet has lost the support, not only of Parliament, but also of the electorate, the only honorable course for the ministers is to resign. If, on the other hand, there is doubt as to whether the parliamentary majority really represents the country upon the matter at issue, the ministers may very properly "advise," *i.e.*, request, the sovereign to dissolve Parliament, which, of course, brings on a general election. In

<sup>1</sup> This is not yet the case in Continental countries, where, even under cabinet systems, impeachment of ministers is sometimes expressly provided for. On France, see p. 502 below.

such a situation the ministers tentatively continue in office. If the election yields a majority prepared to support them, the ministry is given a new lease of life. If, on the other hand, the new parliamentary majority is hostile, no course is open to the ministers save to retire, either immediately or upon suffering an actual defeat (generally on the reply to the Speech from the Throne) when the new parliament begins work. It is usual in such cases for the ministers to hand over their seals of office as soon after the polling as they can put business in shape for their successors. The Conservative government of Mr. Baldwin, however, defeated in the elections of 1923, patriotically tided over the exceptionally unsettled interval while the victors were deciding upon their course of action and allowed itself to be ousted by a technical defeat after Parliament met.

It is hardly necessary to say that a cabinet may save itself by abandoning a bill the defeat or emasculation of which is in certain prospect, or by accepting amendments offered from the floor; also that some ministries are more "thick-skinned" than others, *i.e.*, more disposed to bear up under rebuffs without making them grounds for resignation or a dissolution—a characteristic displayed notably by the Lloyd George coalition government during the two or three years preceding its collapse in 1922. Indeed, a survey of the political history of recent decades would show that cabinets rarely resign without giving themselves the benefit of the chance that goes with a national election. They like to think that the country is behind them even though the House of Commons is not; and sometimes the outcome shows that they were right.<sup>1</sup>

Turning to the way in which the cabinet carries on its work, three main features appear, *i.e.*, the leadership of the prime minister, the use of committees, and the activities of the secretariat. How the prime minister comes by his office and how he selects his colleagues have been described above. Something further, however, may be said about his duties, and especially his relations with the other ministers, the sovereign, and Parliament.

The cabinet  
as a working  
body:

<sup>1</sup> A different twist is given the situation when a cabinet that has the confidence of the House brings about a dissolution in order to take a sort of referendum on a policy or measure on which it wants a clear mandate from the people. This is not often done; and the experience of Mr. Baldwin's government in 1923 shows that to take such a step may mean to court disaster. See pp. 321-322 below.

1. The prime minister:

The prime minister, in relation to the ministers generally, is often described by the phrase *primus inter pares*, the intention being to emphasize that, notwithstanding greater importance and unique functions, he is, after all, not a different order of political being, like the German chancellor (under both empire and republic),<sup>1</sup> but only one of a group, fundamentally on a footing with the others. Strictly, there is no office of prime minister at all; certainly there is no salary for such a dignitary, the incumbent receiving pay from the state only by virtue of the secretaryship or similar post which he holds. Not until 1878 did the term "prime minister" make its appearance in any public document, and then only in the opening clause of the treaty of Berlin, in which Lord Beaconsfield was referred to as "First Lord of Her Majesty's Treasury, Prime Minister of England." For social purposes, the prime minister was indeed given a definite and exalted rank by an act of 1906 fixing the order of precedence in state ceremonies; in this very first statute to take note of his existence he was made the fourth subject of the realm.<sup>2</sup> But even here he is preceded by the Lord Chancellor, one of his "subordinates" in the cabinet, who socially is second only to the archbishop of Canterbury. As a minister, the premier has statutory duties and a salary; as *prime minister*, he has neither, being merely accepted and recognized for what he is, after two centuries of hazardous historical development.<sup>3</sup>

a. Superiority over other ministers

"First among equals" he undoubtedly is. Rather better is Sir William Vernon Harcourt's phrase, *inter stellas luna minores*. For, within ministry and cabinet alike, the premier is the key man, even if not always the outstanding personality.<sup>4</sup> He has

<sup>1</sup> See p. 656 below

<sup>2</sup> For the full order of precedence, see Whitaker's *Almanack* (1934), 224.

<sup>3</sup> "Nowhere in the wide world," says Gladstone, "does so great a substance cast so small a shadow; nowhere is there a man who has so much power, with so little to show for it in the way of formal title or prerogative" *Gleanings from Past Years* (New York, 1889), I, 244. This was written, of course, before the statutory recognition of 1906.

<sup>4</sup> The concept of the prime minister as merely *primus inter pares*—after all, a very mild phrase—has so dominated the older treatises on English government that the official's real power and importance have been very inadequately appreciated. A corrective is supplied in Ramsay Muir, *How Britain Is Governed*, Chap. iii. The phrase *primus inter pares*, Mr. Muir asserts, "is nonsense, as applied to a potentate who appoints and can dismiss his colleagues. He [the prime minister] is, in fact, though not in law, the working head of the state, endowed with such a plenitude of power as no other constitutional ruler in the world possesses, not even the president of the United States" (p. 83).



put the other ministers where they are. He exercises a general surveillance and coördinating influence over their work. He presides at cabinet meetings, and counsels continually with individual members, encouraging, admonishing, advising, and instructing. He irons out difficulties arising between ministers or departments. If necessary, he can require of his colleagues that they accept his views, with the alternative of his resignation or theirs;<sup>1</sup> for it is tactically essential that the cabinet, however divided in its opinions when behind closed doors, shall present a solid front to Parliament and the world.<sup>2</sup> Indeed, he can, and occasionally does, request and secure from the sovereign the removal of a minister for insubordination or indiscretion.<sup>3</sup> He is, and is expected to be, the leader of the ministerial group; as its chief spokesman, he will have to bear the brunt of attacks made upon it; and it is logical enough that his authority shall be disciplinary as well as merely moral. It goes without saying, however, that in all this he must not be overbearing, or harsh, or unfair, or tactless. His government will at best have enough obstacles to overcome; its solidarity must not be imperilled or its morale lowered by grudges or injured feelings within its ranks.<sup>4</sup>

<sup>1</sup> A good illustration is afforded by the circumstances of the break-up of the Labor government in August, 1931. See p. 327 below. On this occasion, Prime Minister MacDonald, after conferring with the king, demanded the resignation of *all* the ministers.

<sup>2</sup> There have been cases in which a cabinet member has resigned rather than accept a policy supported by the prime minister. One of the most notable was the resignation of Lord Randolph Churchill as chancellor of the exchequer in 1887, as a protest against expenditure on armaments requested by the Admiralty and War Office and assented to by the premier. Lord Palmerston, when prime minister, once said that his desk was full of Mr. Gladstone's resignations, though as a matter of fact the difficulties were always ironed out.

<sup>3</sup> A case in point is the dismissal of E. S. Montagu as Secretary of State for India in 1922, on the ground that he had given publicity to an important state paper (a communication from the government of India) without consulting his colleagues. *Annual Register* (1922), 33-34.

<sup>4</sup> The question of the extent to which the prime minister may impose his personal will upon his colleagues as a group is more or less an open one, although the general principle that he shall not override their wishes is clear. There have been instances in which the prime minister publicly announced an intention to ask for a dissolution of Parliament when the cabinet was not agreed upon the plan. The most recent was Mr. Baldwin's historic announcement at Plymouth in 1923. Most precedents indicate, however, that such a decision must be reached by the cabinet as a whole and not by the premier alone. On two occasions Gladstone, when prime minister, wanted a dissolution, but the cabinet was opposed, and no dissolution took place.

b. Relations  
with the sov-  
ereign

The prime minister is the principal—as a rule, the only—channel of communication between the cabinet and the sovereign. To be sure, any minister has a legal right of access to the sovereign; and on more than one occasion Queen Victoria had dealings with individual ministers practically behind the back of their chief. Nowadays, this latter practice has been discontinued, and with rare exceptions the right of individual access is waived, so far as public business is concerned, in favor of the prime minister, to the end that he may be able to put government affairs before the sovereign in a consistent and systematic manner. Frequent conferences at Buckingham Palace and elsewhere give the prime minister opportunity to report on the progress of discussion in the cabinet and of debate in Parliament; and in busy periods these conversations are supplemented by daily letters.<sup>1</sup>

c. Position in  
Parliament

In the branch of Parliament of which he is a member, the prime minister also represents the cabinet as a whole in a sense which is not true of any of his colleagues. He is looked to for the most authoritative statements and explanations of the government's policy; he speaks on most important bills; and at crucial stages he commonly bears the brunt of debate from the government benches. A prime minister who belongs to the House of Commons is, of course, more advantageously situated than one who sits in the House of Lords. The latter must trust a lieutenant to represent him and carry out his instructions in the place where the great legislative battles are fought; and this lieutenant, the government leader in the House, tends strongly to draw into his own hands a part of the authority belonging to the cabinet's nominal head. During Lord Salisbury's last premiership this difficulty was largely obviated by the fact that the government leader in the lower chamber was the prime minister's own nephew, Mr. Balfour. But, as Gladstone once wrote, "the overweight of the House of Commons is apt, other

<sup>1</sup> How completely the prime minister is head of the government was brought home vividly to Americans in 1929 by Mr. MacDonald's personal discussions of international relations with the United States ambassador, Mr. Dawes, and particularly by his visit to the United States to hold conversations with President Hoover on the limitation of armaments and related matters. An official visit of Premier Laval to the United States in 1931 emphasized the same aspect of government in France. Even on international affairs, the ultimate spokesman for cabinet and country is not the foreign secretary, but the prime minister.

things being equal, to bring its leader inconveniently near in power to a prime minister who is a peer." Indeed it is doubtful whether there will ever again be a prime minister not belonging to the popular branch.

It goes without saying that even when the prime minister takes a portfolio which itself entails no arduous labor, *e.g.*, the first lordship of the treasury, he is hard-worked and always pressed for time. He must go through innumerable papers, supervise endless correspondence, receive a steady stream of callers on more or less important public business, confer with individual ministers, visit and submit reports to the sovereign, hold cabinet meetings, and—as if that were not enough—spend much of almost every day when Parliament is in session either on the Treasury Bench (if he is a member of the House of Commons) or in his private room behind the speaker's chair, ever ready to answer questions, to plunge into debate in defense of the government's policy, to decide points of tactical procedure put up to him by his lieutenants. Social demands have to be met also; and groups of constituents will occasionally expect to be taken to the public galleries or entertained to tea on the Terrace overlooking the Thames. Small wonder that in 1924 the broad shoulders of Ramsay MacDonald drooped under the double load of the premiership and the secretaryship for foreign affairs; or that Gladstone was moved to remark, more than forty years ago, that these two offices cannot be combined successfully.

d. Heavy  
burdens

Few, if any, positions in the world carry with them greater power than the British prime-ministership. This does not mean, however, that all British prime ministers have been, in practice, equally powerful; on the contrary, like presidents of the United States, the premiers have differed widely in both power and (what comes to pretty much the same thing) influence. In the first place, some have been strong, dominating personalities—men of the type of the Pitts, Peel, Disraeli, Gladstone, Lloyd George—while others have been mediocrities, such as North, Newcastle, Liverpool, and Campbell-Bannerman. In the second place, those who, like Salisbury and MacDonald, have tried to carry the premiership along with another important office have been unable to realize the possibilities of either post to the full. Furthermore, the growth of the number of departments and

ministerial offices—the sheer spreading out of the field covered by the government—has so augmented the task of supervision as to make it increasingly difficult for the prime minister to wield the control of earlier and simpler days. A prime minister in the House of Lords is, as has been pointed out, at a great disadvantage. And, as Palmerston once lamented, the premier's relative power in his government inevitably tends to be diminished when the principal offices are filled by conspicuously energetic and able men.<sup>1</sup>

2. Cabinet committees

Almost from the beginning of its history, the cabinet has found use for committees. There is no fixed and regular committee system. But as the pressure of work has grown, increasing numbers of special committees have been set up as needed; and at least two committees—one on home affairs and another on finance—are commonly referred to as “permanent.” Committees usually consist of three or four cabinet members most interested in, or best qualified in respect to, a given field of activity; they are expected to study whatever matters are referred to them, with the aid of departmental experts, and perhaps of non-official advisers as well; and the recommendations which they make are very likely to be accepted by a preoccupied and less informed cabinet. As time goes on, the use of committees, once deplored as tending to weaken collective counsel, will probably be extended.<sup>2</sup>

3. Cabinet meetings

When Parliament is in session, regular cabinet meetings are held once or twice a week, during morning and early afternoon hours so as not to conflict with the sittings of the houses. Special meetings may be called by the prime minister; indeed, in tense

<sup>1</sup> At the time when this book was published (1934), the prime-ministership was at low ebb. Ramsay MacDonald, growing old and in poor health, without a party, and surrounded in the cabinet circle chiefly by Conservatives with whom he had worked but with whom he had not much fundamentally in common, was a lonely and—except in the domain of foreign affairs—a rather powerless figure. This was, however, an unusual situation, produced by the abnormalities of “depression” government.

<sup>2</sup> The Committee of Imperial Defense, of which one frequently hears, is not technically a committee of the cabinet, but functions substantially as such. Embracing the prime minister as ex-officio chairman, the political and technical heads of the several defense services, the Chancellor of the Exchequer, and the secretaries of state for foreign affairs, the colonies, and India, and also representatives of the dominions as occasion requires, it and its subcommittees investigate, report, and recommend on all defense questions. From 1925 to 1930, a Committee of Scientific and Civil Research, consisting of the prime minister and such other persons as he chose to designate, was in a generally similar position, and the same is true of the Economic Advisory Council which replaced it. See p. 134 below.

periods the members are likely to be brought together once a day or even oftener. When, however, Parliament has been prorogued, meetings are at lengthier intervals, at the prime minister's discretion.<sup>1</sup> In earlier days there was no regular meeting place. "I see them [the cabinet ministers]," wrote Algernon West, "meeting everywhere."<sup>2</sup> Nowadays, the meetings are pretty generally held at the prime minister's official residence, No. 10 Downing Street, although sometimes in the prime minister's room back of the speaker's chair in the House of Commons, and occasionally at the Foreign Office or, indeed, any other convenient place. The proceedings are decidedly informal. The prime minister presides, and of course he guides the deliberations, even to determining when they shall be brought to a close. But there are no rules of order; there is no fixed quorum; and speeches give way to discussion of a conversational nature in which everybody has a chance to participate. Attempt is made to get decisions, not by formal votes, but by the give-and-take of debate which results in unanimous conclusions. In point of fact, as previously observed, a good many decisions are reached by means of private conferences among principal members rather than through discussions in general meetings.

Nobody has better reason than a group of cabinet ministers to know that in unity there is strength. At all events, they are well enough aware that, exposed as they are to a steady flow of inquiry and criticism in the House of Commons, any lack of harmony, or even the appearance of it, will soon rise to plague them. Two main features or devices help the group to present a solid front. One--already considered-- is the leadership and disciplinary authority of the prime minister. The other is the secrecy of proceedings. No one needs to be told that a group of men brought together to agree upon and carry out a common policy in behalf of a large and varied constituency will be more likely to succeed if their inevitable clashes of opinion are not published to the world. It would not be expected that such a body as the British cabinet would deliberate in public; no group of men charged with

Privacy of  
proceedings

<sup>1</sup> In 1920, there were 82 cabinet meetings, and in 1921, 93. The number was somewhat smaller in succeeding years, e.g., in the year ended March 31, 1925, when it was 62. In addition, there were in the last-mentioned period 159 meetings of cabinet committees and 154 meetings of the Committee of Imperial Defense and its sub-committees.

<sup>2</sup> "No. 10, Downing Street," *Cornhill Magazine*, Jan., 1904.

duties of similarly delicate and solemn character does so. But not only are reporters and other outsiders (except secretarial employees) entirely excluded; the subjects discussed, the opinions voiced, and the conclusions arrived at are divulged only in so far, and at such time, as is deemed expedient. In other words, the cabinet not only deliberates privately, but it throws a veil of secrecy over its proceedings. Following a cabinet meeting, the prime minister—or, in rare instances, some other authorized spokesman—may give the press some indication of what has happened, or may make statements in Parliament from which a good deal can be deduced. Indeed, much may be told freely. But on the other hand the veil may not be lifted at all; and in any event remarks and situations that would tend to disclose serious differences of opinion will almost always be withheld. One is obliged to add, however, that some cabinet ministers are less discreet in their conversation than others, and that, in one way or another, enterprising reporters usually contrive to know pretty well what is going on.<sup>1</sup>

#### 4. Cabinet records

There is, further, the matter of cabinet records—which brings us to an important bit of apparatus dating from less than two decades ago. In the early nineteenth century, it was not uncommon for brief memoranda, or minutes, of cabinet proceedings to be written out and placed on file, at least for the time being. The practice, however, died out, and for a long time no clerk was allowed to be present in the meetings and no records were kept. For knowledge of what had been done the ministers had to rely upon their own or their colleagues' memories, supplemented at times by privately kept notes. It was, indeed,—so Mr. Asquith stated in the House of Commons in 1916—"the inflexible, unwritten rule of the cabinet that no member should take any note or record of the proceedings except the prime minister"; and he went on to explain that the prime minister did so only "for the purpose . . . of sending his letter to the king."

<sup>1</sup> E. M. Sait and D. P. Barrows, *British Politics in Transition*, 51-52. A great deal of information about what has taken place in cabinet meetings eventually becomes available through autobiographies and memoirs published by former cabinet members, often, however, impaired in value by the haziness or untrustworthiness of the reminiscences upon which the writer relies. Noteworthy examples are Gladstone's *Gleanings from Past Years*, Lord Oxford and Asquith's *Fifty Years of British Parliament*, 2 vols. (London, 1926), and his *Memoirs and Reflections* (London, 1928), and Lord Morley's *Recollections* (London, 1917).

Mr. Asquith's statement was by way of interpolation in a speech of his recent successor in the prime-ministership, Mr. Lloyd George; and what Mr. Lloyd George was divulging was that, along with the creation of the war cabinet, it had been decided to introduce arrangements for keeping a complete official record of all cabinet decisions. The need for something of the sort had been felt before. "The cabinet," declared Lord Curzon retrospectively in 1918, "often had the very haziest notion as to what its decisions were . . . cases frequently arose when the matter was left so much in doubt that a minister went away and acted upon what he thought was a decision which subsequently turned out to be no decision at all, or was repudiated by his colleagues." The creation of the war cabinet made the need even greater. Only half a dozen ministers were included; not all of them could attend regularly; and practically everything that was done had to be communicated to the greater number outside. Taking over a device already in use in the war committee of the Asquith coalition—which, in turn, had developed from the secretariat of the Committee of Imperial Defense—the cabinet therefore provided itself with a secretary who was to keep minutes and see to it that every decision arrived at was transmitted not only to all of the cabinet members but also to all other officials or departments affected.

The arrangement was supposed to be for only so long as war conditions should last. But it proved so useful that in 1919 steps were taken to continue it indefinitely; and nowadays the cabinet secretariat is apparently to be regarded as a permanent feature of the government. The innovation did not go without challenge, especially when Parliament's attention was called, in 1922, to the fact that the secretarial staff established at Whitehall Gardens had grown to include 137 persons of all grades and the annual cost of it to £36,800. It was charged that a new "department" was in effect being thrust in between the cabinet and the "administration," and that it was an appropriate adjunct of the new system of personal government which Mr. Lloyd George was accused of seeking to build up. It was argued, too, that all proper purposes would be served by substituting for it a modest enlargement of the prime minister's personal secretariat at Downing Street. Coming in as prime minister in 1922, when feeling on the subject was strong, Mr. Bonar Law brought about a gradual

The cabinet  
secretariat

reduction of personnel to 38 and of cost to approximately £15,000 a year; and thenceforth the secretariat has functioned on substantially this scale.

Already by 1922 Lord Robert Cecil could remark that the secretariat did "a great deal more than merely record the decisions of the cabinet"; and among the additional things which it still does—not by virtue of any statute (if the statutes do not know the existence of the cabinet itself, it is natural that they should not take cognizance of the cabinet secretariat), but only at the behest of the cabinet—are to arrange the agenda of cabinet meetings, to collect data and perform general secretarial work for both the cabinet itself and all cabinet committees, including the Committee of Imperial Defense, and similarly for various conferences, international and otherwise, with which the cabinet is concerned, to communicate cabinet decisions to all officials and departments that have need to know them, and, indeed, to do whatever else the cabinet requires of it. There are certain duties, too, in connection with the League of Nations. In 1917 and 1918, volumes were published containing reports of cabinet proceedings for the year. This was, however, only as a contribution to keeping up the morale of a war-wracked nation, and in point of fact the published reports were of a very general character, rarely or never taking one behind the scenes.<sup>1</sup> After the war, publication was discontinued, and nowadays cabinet proceedings remain no less confidential, and even secret, than before. Instead of being treasured only in members' minds, however,—or, at best, in fragmentary notes—they are preserved in systematic minutes, from which they may some day be drawn by the historian for the enlightenment of an interested world.<sup>2</sup>

<sup>1</sup> These reports were printed as parliamentary papers: *Report of the War Cabinet for Year 1917*, Cmd. 9005 (1918), and *Report of the War Cabinet for 1918*, Cmd. 325 (1919).

<sup>2</sup> J. R. Starr, "The English Cabinet Secretariat," *Amer. Polit. Sci. Rev.*, May, 1928. It will be recalled that no formal record is kept of proceedings of the president's cabinet in the United States.

The workings of the cabinet in general are described in A. L. Lowell, *op. cit.*, I, Chap. iii; H. Finer, *The Theory and Practice of Modern Government*, II, Chap. xxii; S. Low, *Governance of England* (rev. ed.), Chaps. ii, iv; and W. R. Anson, *Law and Custom of the Constitution* (3rd ed.), II, Pt. i, Chap. ii. W. Bagehot, *The English Constitution*, Chaps. i, vi-ix, is decidedly worth reading. Much that is interesting and significant will be found in biographies and memoirs of British statesmen, as, for example, J. Morley, *Life of William Ewart Gladstone*, 3 vols. (London, 1903); W. F. Monypenny and G. E. Buckle, *Life of Benjamin Disraeli*, 6 vols. (London,



1910-20); W. S. Churchill, *Lord Randolph Churchill*, 2 vols. (New York, 1906); J. A. Spender, *The Life of the Right Hon. Sir Henry Campbell-Bannerman*, 2 vols. (London, 1923); A. G. Gardiner, *The Life of Sir William Harcourt*, 2 vols. (London, 1923); Lord Oxford and Asquith, *Fifty Years of British Parliament*, 2 vols. (London, 1926); *ibid.*, *Memories and Reflections* (London, 1928); Lord Morley, *Recollections* (London, 1917); Earl of Ronaldshay, *The Life of Lord Curzon*, 3 vols. (London, 1928); and *War Memoirs of David Lloyd George*, 4 vols. (London, 1933-34). A classic comparison of the English cabinet system and the American presidential system is Woodrow Wilson, *Congressional Government* (Boston, 1885). A suggestive recent discussion is H. L. McBain, *The Living Constitution* (New York, 1927), Chap. iv.

## CHAPTER VII

### THE EXECUTIVE DEPARTMENTS

“Whitehall”      An inquirer wishing to find the spot from which the day-to-day enforcement of the laws is directed and the multifarious administrative labors of the government are managed would be told to turn his steps in the direction of a busy street in the vicinity of the Houses of Parliament known as Whitehall. There he would discover a series of venerable buildings in which are housed most of the great executive departments—the Foreign Office, the Home Office, the India Office, and others; and there he would find the ministers and their principal subordinates at their daily tasks. For, as in other governments, executive work is carried on and administration directed in more or less separate and specialized establishments or departments, to which most of the ministers—though with a few notable exceptions—are attached.

Variety of departmental origins and organization

In the United States, the ten executive departments of the national government stand on a common footing and bear much resemblance to one another. All have been created by act of Congress; all are presided over by single heads, known as secretaries except in the cases of the Post Office Department and the Department of Justice; all stand in substantially the same relation to the president and to Congress.<sup>1</sup> The executive departments in most Continental countries, notably France and Germany, likewise present an appearance of having been planned with a good deal of regard for logic and symmetry.<sup>2</sup> The English departments, on the other hand, are extremely heterogeneous. To begin with, there is no uniformity of terminology; some are offices of secretaries of state, some are known as boards, and some as ministries. Some, *e.g.*, the Treasury, represent survivals of independent offices of state which flourished in earlier times; eight, *e.g.*, the Foreign Office and the Home Office, are offshoots of an ancient

<sup>1</sup> For a brief description, see F. A. Ogg and P. O. Ray, *Introduction to American Government* (4th ed., New York, 1931), Chaps. xvii–xviii.

<sup>2</sup> See p. 508 below.

“secretariat of state”;<sup>1</sup> others, like the Board of Education, have sprung from committees of the privy council; still others, such as the ministries of Labor and Health, have been created outright by statute.

Again, viewed functionally, the departments present at least three main types: first, purely “political” departments, *e.g.*, the Foreign Office, the War Office, the Admiralty, and the Home Office, exercising the oldest and most fundamental functions of government; second, the “economic” departments, such as the ministries of Labor and Agriculture and Fisheries, and the Board of Trade; and third, the departments having to do with matters of a broadly social character, *i.e.*, the Ministry of Health and the Board of Education. Furthermore, there is hardly less diversity of organization than of origins and functions. In practically all cases, it is true, the departments are presided over by a single responsible minister, assisted by a parliamentary under-secretary, two or three, or more, permanent under-secretaries, and a greater or lesser body of secretaries, counselors, legal advisers, chiefs and assistants, and other non-political officials, who, under direction, carry on the detailed administrative and other work, and whose tenure is not affected by the political fortunes of their chiefs. Beyond these larger aspects, however, there are more differences than similarities.<sup>2</sup>

The oldest department, the only one that exercises substantial control over the others, and therefore in many respects the central and most important one of them all, is the Treasury. This is true whether one is thinking simply of the consultative, policy-framing, and supervising establishment presided over by the Chancellor of the Exchequer, or, in a broader way, of the whole group of related, but more or less autonomous, agencies that are provided for by the same vote as the Treasury proper or are under the direct control of Treasury officials. No branch of the government better illustrates the curious intermingling of institutions and practices that have been carried down to the present day by the

The Treasury

<sup>1</sup> See p. 120 below.

<sup>2</sup> A convenient outline of the general scheme of ministries, boards, and other agencies as it existed before the World War will be found in R. H. Gretton, *The King's Government; A Study of the Growth of the Central Administration* (London, 1913), and a similar sketch of arrangements shortly after the war in C. D. Burns, *Whitehall* (London, 1921).

Evolution of  
the Treasury  
Board

drift of history and other agencies and usages that have been scientifically planned and systematically provided for by statute.

The origins of the Treasury are bound up with the development of the Exchequer,<sup>1</sup> or revenue office, of the Norman-Angevin kings, which in the twelfth and thirteenth centuries gradually passed into the hands of a Treasurer, later known as the Lord High Treasurer. By Tudor times, this official had grown rather inconveniently powerful, and in 1612 James I tried the experiment of putting the post "in commission," *i.e.*, bestowing it upon a board of Lords Commissioners of His Majesty's Treasury, with a certain primacy in a First Lord. The plan worked well, and after Queen Anne's day no Lord High Treasurer was ever again appointed. Thenceforth, the duties connected with the office devolved upon a Treasury Board of five members; and in law they are still thus provided for. Further developments, however, in the nineteenth century, brought it about that the Board gave up transacting business in a collective capacity, yielding in favor of one of its members, the Chancellor of the Exchequer. The First Lord indeed retained nominal leadership, but was likely to be an important figure only when, as was increasingly the case after the eighteenth century, the post was assumed by the prime minister.

Today, therefore, the situation, so far as the Treasury in the narrower sense is concerned, is substantially this. The Treasury Board, which legally has charge, never meets except to transact one or two minor sorts of formal business, and substantially all of the work is done by the members individually. Indeed, practically all of it except signing papers and some other incidental duties, is performed by one member alone, *i.e.*, the Chancellor of the Exchequer, with his staff. The First Lord, the nominal head, is, as a rule, the prime minister. Three other members, known as the Junior Lords, have certain minor tasks in connection with the Treasury, but their really important work is performed in the capacity of assistants to the Parliamentary Secretary to the Treasury, who is chief government whip in the House of Commons; in other words, they are themselves government whips.

The Chancellor  
of the Ex-  
chequer

The fifth member of the group is the only one who gives his attention primarily to Treasury business. He is the "Second

<sup>1</sup> The name arose from the chequered table at which the work of accounting was performed.

Lord," otherwise known as the Chancellor of the Exchequer. This official is very definitely the finance minister of the kingdom, and as such he counsels with the spending departments and officers on the appropriations they will ask, prepares the annual budget, embodying a statement of the proposed expenditures of the year and a program of taxation calculated to produce the requisite income, pilots financial measures through Parliament, acts as master of the mint, and supervises the collection of the revenues. It is hardly necessary to add that the nature of his duties requires that he be a member of the House of Commons, where finance bills make their first appearance, and where alone, in point of fact, their fate is in these days determined. Indeed, the Chancellor of the Exchequer is usually government leader in that house if the prime minister is in the House of Lords or for any other reason finds it necessary to delegate the responsibility to one of his colleagues. In any case, it goes without saying that he is one of the busiest men in the government, and one of the most important.

Speaking broadly, the business of the Treasury is to find out how much money will be required in a fiscal year to provide for fixed charges such as interest on the national debt and to meet the needs of the spending departments, and then to see that the requisite amounts are raised, made available to the proper authorities, and expended according to law. This entails a wide variety of important functions and operations. To begin with, the Treasury, with the aid of the spending departments, prepares all estimates of expenditure. Similarly, it prepares all estimates of revenue and decides what changes in taxation will be required to meet prospective outlays. Presenting the data and recommendations to Parliament, it secures that body's indispensable, although usually rather perfunctory, approval of its plans.<sup>1</sup> It supervises the collection of all revenues, the coining and printing of money, the floating of loans, and the safe-keeping of the public funds. It determines how much of the money that Parliament has made available to a spending agency shall actually be used, and under what conditions (for it does not follow that all that has been granted must be spent). Through a semi-independent Exchequer and Audit Department, presided over by a non-political Comp-

Treasury  
functions

<sup>1</sup> The budgetary aspects of the Treasury's activities are dealt with in Chap. XIV below.

troller and Auditor-General, it sees that every request for a "credit" against public funds kept in the banks is supported by parliamentary authority. Through the same medium, it likewise checks after the money has been spent to ascertain whether every disbursement actually made had similar justification. In the rôle of financial expert, it continuously supervises the organization and personnel of the spending departments, wields ultimate control over civil service regulations, and advises on and often in effect fixes wage and salary scales. Itself only incidentally and in small degree a spending department, the Treasury keeps its hand on every department, agency, and officer engaged either mainly or incidentally in collecting, spending, or paying out national moneys; and in pursuing its ceaseless task, it becomes an all-pervading—one is tempted to add an all-powerful—instrumentality of centralized administrative correlation and control.

The revenues  
and the Con-  
solidated  
Fund

The revenues are collected through three great sub-departments or offices, *i.e.*, the Post Office, Customs, and Inland Revenue, and a minor one known as Woods, Forests, and Lands, each with a staff of its own. The Post Office, which has charge of communication by telegraph (since 1870) and telephone (since 1911) as well as by post, and of which the British Broadcasting Corporation is a special branch, is presided over by a minister, the Postmaster-General, who is sometimes included in the cabinet. The other three services are in the hands of statutory boards of commissioners.<sup>1</sup> Formerly, the proceeds of the various taxes were paid into separate accounts or funds at the Exchequer, and Parliament, when making any appropriation, would specify the fund from which the particular outlay should be met. An act of 1787, however, introduced an improved plan under which all revenues (with slight exceptions) are paid into a single Consolidated Fund, from which all disbursements (again with slight exceptions) are made. Most of the taxes are imposed by "permanent" statutes, which stand unchanged for considerable periods of time; but some

<sup>1</sup> For a brief account of the collection of the national revenue (90 per cent of which came from taxation in 1930), see J. W. Hills and E. A. Fellowes, *British Government Finance* (New York, 1932), Chap. iv. Of the British people's annual income of about four billion pounds, something like one-fifth passes every year through the hands of the state. On the Post Office and postal policy, see C. F. D. Marshall, *The British Post Office from Its Beginning to the End of 1925* (London, 1927).

are laid afresh each year, or at all events are subject to an annual revision of rates. Similarly, some expenditures are regulated by standing laws and others by annual appropriations. Most disbursements fall in the latter category; only those which it is particularly desirable to keep out of politics, *e.g.*, the Civil List, the salaries of judges, and interest on the national debt, are "Consolidated Fund charges," paid directly out of the Fund without annual authorization. Expenditures which are voted from year to year are said to be for the "supply services," because the appropriations are made by the House of Commons in Committee of Supply, which is a form of committee of the whole.<sup>1</sup>

Four of the present-day departments may be bracketed together under the general head of "defense services." Two go back some distance historically; two others have existed only since the World War. All are presided over and otherwise manned mainly by civilians, but with ample provision for advice from military and naval experts. An ancient and honorable office under the crown was that of Lord High Admiral. This dignity, however, suffered the same fate—and for the same general reasons—as that of Lord High Treasurer. Near the opening of the eighteenth century it was placed in commission, and the inquirer in Whitehall would find no official bearing the name today. Instead, he would come upon a board of "Lords Commissioners for executing the office of Lord High Admiral," otherwise known as the Admiralty Board; and this group, composed partly of "civil lords" and partly of a varying number of "sea lords" (*i.e.*, men of experience and standing in the navy), and presided over by a First Lord who is to all intents and purposes a minister of marine, would be found administering the affairs of what we in the United States should call the Navy Department. Unlike the Treasury Board, which never meets, the Admiralty Board holds regular and frequent sessions. The magnitude of Britain's sea power may be presumed

The Defense  
Services:

1. The Ad-  
miralty

<sup>1</sup> See p. 277 below. The best systematic accounts of the Treasury are R. G. Hawtrey, *The Exchequer and the Control of Expenditure* (London, 1921), and T. L. Heath, *The Treasury* (London, 1927). The latter is a volume in the Whitehall Series, edited by J. Marchant, and bearing considerable resemblance to the "Service Monographs of the United States" issued by the Institute for Government Research, now a division of the Brookings Institution of Washington. For briefer accounts, see A. L. Lowell, *Government of England*, I, 115-130, and W. R. Anson, *Law and Custom of the Constitution* (3rd ed.), II, Pt. 1, 173-190.

to leave the authorities of the Admiralty with no lack of important work to do.<sup>1</sup>

2. The War  
Office

The origin of the second of the older defense services, *i.e.*, the War Office, requires a word of explanation. Eight out of the total number of leading government departments today are products of a curious evolution of the ancient office of king's secretary, first heard of in the reign of Henry III. Originally there was but a single official known as king's secretary, or "secretary of state"; but, after sundry transmutations, a second was added in the eighteenth century, although no new *office* was created for him.<sup>2</sup> At the opening of the nineteenth century a third was provided for, in 1854 a fourth, after the Indian mutiny of 1857 a fifth, during the World War a sixth, in 1925 a seventh, and in 1926 an eighth. In theory, the incumbents of all of these eight "principal secretaryships of state" hold the same office, and except as limited by a few statutory restrictions each is legally competent to exercise the functions of any or all of the others. Acts of Parliament confer powers, not on one of the secretaries specifically, but simply on "a secretary of state," the distribution of functions being a matter of understanding and practice. In actual usage, each of the eight secretaries, though signing all papers as simply "one of His Majesty's principal secretaries of state," holds strictly to his own domain.<sup>3</sup> The group comprises: (1) the Secretary of State for Foreign Affairs, (2) the Secretary of State for the Dominions, (3) the Secretary of State for the Colonies, (4) the Secretary of State for War, (5) the Secretary of State for India, (6) the Secretary of State for the Home Department, (7) the Secretary of State for Air, and (8) the Secretary of State for Scotland.<sup>4</sup>

The War Office has, therefore, a single head, the Secretary of State for War, who first appears under that title in 1794. Partly because of the difficulty of maintaining harmonious relations between military officers and civil authorities, and partly be-

<sup>1</sup> G. Aston, *The Navy of Today* (London, 1927).

<sup>2</sup> M. A. Thompson, *The Secretaries of State, 1681-1782* (Oxford, 1934).

<sup>3</sup> Except that when one is absent from the country another may act in his place.

<sup>4</sup> The last-mentioned office, dating in its present form from 1926, represents an expansion of the office of Secretary for Scotland, created in 1885. It is possible to view it as not historically an offshoot of the secretariat of state; but at all events it has been assimilated to the position occupied by the other branches or departments named.



cause of the far less sympathetic attitude in Britain toward a military establishment than toward the palpably indispensable navy, War Office organization has had an exceptionally tortuous history. There is no point to dealing with the matter here, or even with the technicalities of present-day organization. Suffice it to say that the outcome of a long succession of investigations, reports, and debates was the adoption, in 1904, after highly unsatisfactory experiences during the Boer War, of a plan of administrative and advisory organization which yielded good results in the critical World War years, and which, with few significant changes, remains in effect today.<sup>1</sup>

The World War witnessed a remarkable development in the use of air-craft for military purposes, and in 1918 Great Britain became the first nation to centralize the supervision of aeronautical activity in a separate government department. The preexisting air establishments in the War Office and Admiralty were brought together in an Air Ministry; the flying branches of the army and navy were merged into a Royal Air Force under the new ministry's supervision; and, although a war expedient, the ministry survived the peace, and today not only administers the Air Force but controls civil aviation as well. For some years after the war, both the army and the navy showed jealousy toward the new department and urged that full control of air forces be restored to them. Their contentions, however, did not prevail. In its organization the Air Ministry is based on the same principles as the Admiralty and the War Office, but with a smaller departmental staff.

3. The Air  
Ministry

Closely related to the foregoing defense services in origin and function, though not in organization, is the Ministry of Pensions. Formerly, the Admiralty and War Office contained bureaus which distributed pensions for death and disability out of the funds of the state; and during the World War sundry

4. The Min-  
istry of Pen-  
sions

<sup>1</sup> The history of army administration is dealt with at some length in J. S. Omond, *Parliament and the Army, 1642-1904* (Cambridge, Eng., 1933). It is of interest to note that the Irish Free State has substituted a ministry of defense for the conventional war ministry; that in 1928 the Kingdom of the Netherlands abolished its ministries of war and marine (until then under a single administrative head) and established in their place a ministry of defense; that a parliamentary committee in Great Britain recommended a similar change in 1922; and that proposals on the same lines have several times been made in the United States, e.g., by Nicholas Murray Butler in *A Program of Peace* (New York, 1928), and in a bill introduced in Congress by Senator Byrns in 1932.

parliamentary commissions reported plans for increasing the sums available and for administering them more effectively. The upshot of a number of more or less unsatisfactory experiments in 1915-16 was an act of December, 1916, unifying in a Ministry of Pensions most of the powers and duties of preëxisting pension authorities. This ministry has to do only with military and naval pensions; old age pensions and civil service pensions are administered by entirely different authorities. Even so, it is responsible for a larger expenditure of public money than any other department. The central office of the ministry at London is concerned chiefly with supervising the awards and payments made through regional offices scattered throughout the kingdom; and each of these offices is advised, in turn, by local pensions committees, representative of various interests. In 1926, about 2,000,000 men, women, and children received pensions through these channels, though the number is in later years diminishing.

Foreign and  
imperial re-  
lations:

Another group of departments consists of those that have to do with foreign and imperial relations. One, *i.e.*, the Foreign Office, conducts the country's dealings with other independent states; three others, *i.e.*, the Dominions, Colonial, and India Offices, manage relations with the overseas dominions and dependencies. A moment's reflection upon Britain's position in the world—the complexity of her foreign interests, the number and extent of her colonial possessions, and the critical character of her relationship with India—will suggest that every one of these ministries is of rather special importance.

1. The For-  
eign Office

The work of the Foreign Office is to only a limited extent administrative in the proper sense of the term. Rather, it consists chiefly in gathering and organizing information, corresponding with foreign governments, preparing instructions for representatives abroad, negotiating treaties and conventions, and formulating foreign policy. These are difficult, delicate, and sometimes hazardous tasks, and it goes without saying that this branch of the government knows and does many things which the well-being of the country forbids to be made public, at all events until after a good deal of time has elapsed. From this it follows, first, that the Foreign Secretary is selected with more regard for prestige and experience than other department chiefs; second, that the proportion of superior officials in this

department is larger than in others; third, that a far greater proportion of decisions and actions emanate from, or at all events are expressly approved by, the head of the department than in departments whose work is more largely administrative; and fourth, that the department is more detached, and even immune, from parliamentary control than any of the others. All of the threads are gathered tightly in the Foreign Secretary's hands.<sup>1</sup> Parliament can promote or thwart foreign policies by granting or withholding funds; a foreign minister whose acts or policies are disliked can be got rid of by sustained opposition in the House of Commons; treaties are sometimes presented for parliamentary approval (invariably in case they cede territory, impose a burden on the national treasury, or affect the substantive rights of British subjects); and the cabinet is expected to keep both houses informed, at least in a general way, on the state of foreign affairs. Much of the time, however, the Foreign Office functions without much actual relation to Parliament.<sup>2</sup>

Until 1921, the Foreign Service, both diplomatic and consular, although supervised by the Foreign Office, was a distinct or-

<sup>1</sup> At all events, as nearly so as the increasing arduousness of that official's duties permit. The establishment of the League of Nations and the necessity of consulting more constantly than formerly with the governments of the overseas dominions have added much to the burdens of an already overworked department head. At times, some minister having only nominal duties, e.g., the Chancellor of the Duchy of Lancaster, has been given something worth while to do by being assigned to assist with League business, and in particular to represent the Foreign Secretary at meetings of the Assembly and Council when that official cannot himself go to Geneva. It is estimated that the work of the Foreign Office has increased five-fold since 1914. Some relief, however, is being found through the transference of certain activities to other agencies. See S. H. Bailey, "Devolution in the Conduct of International Relations," *Economica*, Nov., 1930.

<sup>2</sup> Shortly before the World War, apprehensions aroused by the Moroccan crisis of 1911 and doubts stirred by diplomatic "conversations" with the French government led to publication of a parliamentary paper entitled "Methods Adopted in the Parliaments of Foreign Countries for Dealing with International Questions" (Cmd. 6102, 1912, and carried to a later date in Cmd. 2282, 1924), and also to non-official proposals for the creation of a committee on foreign affairs in the House of Commons (e.g., S. Low, "Foreign Office Autocracy," *Fortnightly Rev.*, Jan., 1912). Popular reaction against secret diplomacy gave the suggestion for a committee much vogue during the later portion of the war and for some years afterwards. The matter was debated at least three times in Parliament, and was brought up by Labor members, including Ramsay MacDonald, as late as 1923. During neither of its two periods in office, however, did Labor, although furnishing the principal support for the plan, take any steps toward effectuating it. In Great Britain alone among leading states is there no committee of the kind.

ganization, precisely as was the Foreign Service of the United States, in relation to the State Department, until 1924. A statute of the year mentioned, however, brought about a closer relation, with results generally regarded as satisfactory. All members of the combined establishment are now liable for service both at home and abroad, and recruits are regularly sent into the field for a period before being assigned definitely to the Foreign Office or to the diplomatic service for a career. The administrative side of the consular service is looked after by the Foreign Office, but its commercial work is directed by a different organization, the so-called Department of Overseas Trade, established in 1917 to do away with conflicts which had arisen between the commercial attachés and the consuls, and also to enable better use to be made of commercial information collected by the consular officials. This newer agency is controlled partly by the Foreign Office and partly by the Board of Trade, occupying, indeed, a quasi-independent position between the two.<sup>1</sup>

2. The Colonial and Dominions Offices

In the later eighteenth century, colonial affairs were supervised by one of the two secretaries of state then existing; from him the function passed, as the century closed, to the War Office; and when the Crimean War broke out, in 1854, this department was relieved of the burden by the creation of a separate secretaryship for the colonies. Already various parts of the Empire occupied widely different positions politically, and from the outset the work of the Colonial Office had to be conducted in such a way as to be directive where the dependencies had few or no rights of self-government, but only consultative, or even merely informative, where, as in Canada and Australia, full self-government had been, or was being, arrived at. From 1907 to 1921, the ministry was organized in two main sections, the colonies and protectorates division and the dominions division, and in 1921 a third section, known as the Middle East department, was added, with administrative control over the mandated territories in the Near East. On the other hand, in 1925 the dominions division was erected into a separate and co-

<sup>1</sup> A. J. Herbertson and O. J. R. Howarth, *Oxford Survey of the British Empire* (Oxford, 1914), VI, Chap. ii; A. Cecil, *British Foreign Secretaries, 1807-1916* (London, 1927); J. Tilley and S. Gaselce, *The Foreign Office* (London, 1933), in the Whitehall Series

ordinate ministry, the Dominions Office; and although the new establishment continued to be housed in the same building as the Colonial Office, and for five years had the same administrative head, in 1930 it was given a fully separate status, with a minister of its own.<sup>1</sup>

Down to 1858 the government of British India was carried on by the East India Company, subject to supervision by a Board of Control representing the crown. The Mutiny further embarrassed the already discredited Company, which soon lost its charter, and the British government took over full and direct management of Indian affairs. Control of administration was assigned to a new ministry presided over by an added secretary of state and known as the India Office; and to advise the department a Council of India was created, consisting of from ten to fifteen members (at least nine of whom must have served or resided in India for ten years) appointed by the secretary of state for a term of seven years.<sup>2</sup> Cautious changes in the direction of more autonomy for the dependency have been made, notably by a Government of India Act of 1919; but the India Office still forms an important and necessary link between the administrative agencies in India and the policy-making authorities at London.<sup>3</sup>

3. The India Office

The Home Office is, in the expressive phrase of Lowell, a "residuary legatee"; that is to say, it represents the most direct survival of the original secretariat, and as such retains whatever functions of that historic office have not been outgrown or assigned elsewhere. In addition, however, it has many functions that have come to it later; indeed, a British writer observes that its complex and multifarious duties are, "in largest part, due to the feverish legislative activity of the nineteenth century." Save that its jurisdiction reaches so far beyond the water's edge as to include the Channel Islands and the Isle of Man, the Home Office has to do entirely with domestic affairs.<sup>4</sup> It is not

The Home Office

<sup>1</sup> G. V. Fiddes, *The Dominions and Colonial Offices* (London, 1926), Chaps. i-x, in the Whitehall Series; A. Bertram, *The Colonial Service* (Cambridge, 1930).

<sup>2</sup> At the present day the Council consists of from eight to twelve members, at least half of whom must have the qualification mentioned.

<sup>3</sup> M. C. C. Seton, *The India Office* (London, 1926), in the Whitehall Series. Cf. p. 418 below.

<sup>4</sup> Excluding those of Scotland, which are under the jurisdiction of the secretary of state for that area.

much like the Department of the Interior in the United States, for the reason that several of its functions belong in our system to the states, while others have no counterparts here. At the same time, it is even less like a Continental ministry of the interior; because although it directly administers the police establishment of metropolitan London, inspects and makes regulations for the police establishments elsewhere throughout England, Wales, and Northern Ireland, and sees to the nationwide enforcement of the factory acts and of much other welfare and remedial legislation, it does not supervise and direct the work of local government in any such way as is done in France, Italy, and elsewhere.<sup>1</sup> Its relation to police is, however, exceedingly important, because under the British system the national government bears half of the cost of the police establishment in all counties and boroughs in which the constabulary meets the standards which the Home Office fixes, and because it is the Home Office that makes the inspections and issues the necessary certificates. To mention only a few of a long list of other functions, the Home Office receives and transmits petitions to the crown; prepares and countersigns the warrants, or orders, to which the sovereign affixes his "sign-manual," or personal signature; considers applications for pardons and advises concerning the disposal to be made of them; supervises electoral registration, and also elections; manages the naturalization of aliens; approves arrangements for the "assizes," or circuits, of the judges; and supervises the management of prisons, both national and local.<sup>2</sup>

The Lord  
Chancellor

There is in England no unified department of justice corresponding to a Continental ministry of justice or the Department of Justice organized in the United States in 1870.<sup>3</sup> Work of the same kind is performed, of course, but it is divided among three main departments and officers, *i.e.*, the Home Office (as already indicated), the Lord Chancellor, and the Attorney-

<sup>1</sup> In so far as there is such unified central control in England at all, it is to be found in the Ministry of Health. See p. 130 below.

<sup>2</sup> E. Troup, *The Home Office* (London, 1925), in the Whitehall Series. On the Home Office's functions in relation to police, see R. B. Fosdick, *European Police Systems* (New York, 1915), 39-65, and especially *Report of the Committee [Desborough] on the Police Service of England, Wales, and Scotland*, Cmd. 253 (1919).

<sup>3</sup> For an argument that there should be one, see R. S. T. Chorley, "Essays in Law Reform: III, A Ministry of Justice and the Reform of Judicial Institutions," *Polit. Quar.*, Oct.-Dec., 1933.

General. Far the most important is the Lord Chancellor. "The greatest dignitary," says Lowell, "in the British government, the one endowed by law with the most exalted and most diverse functions, the only great officer of state who has retained his ancient rights, the man who defies the doctrine of the separation of powers more than any other personage on earth, is the Lord Chancellor."<sup>1</sup> Here again we come upon an office of great antiquity. Originally—as far back as the eleventh century—the Lord High Chancellor was merely the king's chief scribe. In time, however, he became a trusted adviser, especially in matters touching the exercise of the royal "grace," *i.e.*, the redress of grievances for which the common law—often "a roguish thing," so Selden declared—made no provision; and by the sixteenth century, when Sir Thomas More appears as the first lay holder of the office, he was an imposing figure as the dispenser of "equity" in the Court of Chancery. As custodian of the royal seal, it fell to him to affix the stamp of authenticity to all royal proclamations. His primacy in the Court of Chancery, furthermore, brought him large judicial patronage; and when the judicial reforms of 1873-76 fused the organization of the common law and equity courts,<sup>2</sup> control over appointments to practically all important judicial positions passed into his hands. Meanwhile he gathered still other weighty functions.

Nowadays, therefore, the work of this remarkable dignitary runs somewhat as follows: he is the chief judge in the High Court of Justice and in the Court of Appeal; he is the principal legal member of the cabinet and adviser to the ministers generally on legal matters; he recommends for appointment to higher judicial positions, and in fact, although not in form, appoints and removes the county court judges and most of the justices of the peace; he presides in the House of Lords and—if a peer, as he now invariably is—participates in its debates.<sup>3</sup> He does not, properly, administer a department. But his activity and influence touch every branch of government. To him is assigned really more than any one man can do, as is suggested in the half-humorous remark of a former Lord Chancellor, Lord Lyndhurst, that the work falls into three

<sup>1</sup> *Government of England*, I, 131.

<sup>2</sup> See p. 371 below.

<sup>3</sup> If a Lord Chancellor is appointed who is not a peer, he is promptly made one

parts: "first, the business that is worth the labor done; second, that which does itself; and third, that which is not done at all."

Law officers  
of the crown

To be mentioned in close conjunction with the Lord Chancellor are the "law officers of the crown," *i.e.*, the Attorney-General and his colleague and substitute, the Solicitor-General. Both belong to the ministry, the former usually also to the cabinet; and both are important and well-paid officials, being selected from among the most eminent barristers belonging to the party in power. Their duties are two-fold: first, to assist the Lord Chancellor in giving legal advice to the cabinet and the several departments (although, as in the United States, most of the latter now have legal advisers on their own staffs whose opinions suffice upon all except the most weighty matters), and, second, to represent the crown in legal proceedings, especially in important criminal and political trials.<sup>1</sup>

Economic  
and social de-  
partments.

Finance, defense, foreign relations, justice—these, and perhaps certain other activities that have been mentioned, are the primary, fundamental functions of government. But the past two hundred years have added many other important functions, especially such as have to do with the control of economic relationships and the improvement of social conditions; and naturally it is on this side that new governmental machinery has been brought into play most extensively, in Britain as in other countries. Four executive departments at London which are concerned with economic affairs, and two which have to do with social matters, call for a word of comment. Three of the six owe their present form to legislation dating no farther back than twenty years ago.

1. The Board  
of Trade

First, there is the Board of Trade, transformed from a privy council committee in 1862. Technically, all of the "principal secretaries of state," together with several other important personages, are members. Actually, however, this board, like a number of others, is a phantom, in that it never meets and its work is carried on under the sole direction of a single official, the President of the Board, and his staff. Until three-quarters of a century ago,

<sup>1</sup> See K. M. Johnson, "The Lord Chancellor as a Minister of Justice," *Jour. Amer. Judicature Soc.*, Aug., 1929; A. H. Dennis, "The Legal Departments of the Crown," *Public Admin.*, IV, No. 2 (1926).



the Board occupied itself chiefly with compiling commercial statistics and advising other departments on commercial matters. These functions have now passed to the Department of Overseas Trade. But various other duties have been assigned, so that at present, in addition to gathering and publishing statistics on labor, wages, and other industrial subjects, the Board maintains a register of British ships, makes and executes regulations for the safety of merchant vessels, provides and keeps up lighthouses, controls harbors, registers and supervises joint-stock companies, registers patents and trademarks, maintains standards of weights and measures, administers the law of bankruptcy, and grants provisional orders empowering borough councils to undertake the ownership or operation of tramways, gas plants, waterworks, and other public utilities.<sup>1</sup>

In 1889, a Board of Agriculture was created to take over the duties previously discharged by a committee of the privy council in connection with diseases of animals, together with the functions of former land commissioners pertaining to inclosures, allotments, and the drainage and improvement of land; and in 1903 supervision of fisheries was transferred from the Board of Trade to the renamed Board of Agriculture and Fisheries. Like the Board of Trade, this board was a phantom; for although it consisted legally of a dozen of the highest officers of state, only one of its members, *i.e.*, the President, gave time or thought to its work. During and after the World War much legislation was enacted looking to the reorganization of British agriculture, and in 1919 the Board became the Ministry of Agriculture and Fisheries, with research, educational, and advisory functions broadly similar to those of the Department of Agriculture in the United States—save, of course, for the inclusion of the fishing industry among the objects of its attention.<sup>2</sup>

A Ministry of Transport was created in 1919 with a view to assembling in a single establishment various transportation functions exercised previously by a number of different departments.

2. The Ministry of Agriculture and Fisheries.

3. The Ministry of Transport

<sup>1</sup> H. L. Smith, *The Board of Trade* (London, 1928), in the Whitehall Series. On the regulation of public utilities in Great Britain, with which the Ministry of Transport also has much to do, see O. C. Hormell, *Control of Public Utilities Abroad* (Albany, N. Y., 1930), reprinted from *Report of Commission on Revision of the Public Service Commissions Law of the State of New York*.

<sup>2</sup> F. Floud, *The Ministry of Agriculture and Fisheries* (London, 1927), in the Whitehall Series.

At that time, the railroads were still operated by the government, as they had been during the war; and it was intended that the new ministry should occupy itself largely with railway affairs. Two years later, however, the railroads were returned to private management, and at once the proposal began to be heard that the Transport Ministry, thus deprived of its main reason for existence, be abolished. Action of the sort has not been taken, but the department continues to have an uncertain lease on life. Should the Labor party's program for railway nationalization ever be adopted, something like it would undoubtedly be required. Meanwhile one of the sections into which the ministry is divided today has to do with the improvement and expansion of such facilities as light railways, docks, harbors, canals, and roads; another—the finance department—with fares, rates, and charges; and a third, with public safety.

4. The Ministry of Labor

The Ministry of Agriculture and Fisheries, and to a considerable extent the Board of Trade, and even the Transport Ministry, performs functions in connection with particular industries or occupations. The Ministry of Labor (created in 1916), on the other hand, has to do with industries and occupations of many different kinds, notably in connection with the administration of laws relating to labor exchanges (employment offices), unemployment insurance, minimum wage standards, and the settlement of industrial disputes. In these various fields, the general policy of the government has been to promote and supplement the activities of trade unions, employers' associations, and other voluntary groups; and the function of the Ministry of Labor is, in the main, not to exercise positive control, but to coöperate with non-governmental groups and agencies in better organizing the relations between employers and workers.

5. The Ministry of Health

A department of large social importance is the Ministry of Health, established in 1919 with a view to correlating under a single authority a wide variety of public health and related functions previously dispersed among a number of unrelated administrative agencies. Medical examinations in connection with recruiting brought to light grave facts concerning the physical fitness of the people, especially the industrial classes, and forced the conclusion that the state must in future concern itself far more with matters of public health than in times past. Practically every major function that the ministry possesses today came to

supervisory contact of the central board is principally with these committees.<sup>1</sup>

Such, in bare outline, are the principal departments and offices through which the ever-widening executive and administrative functions of the national government are performed. In the succeeding chapter, attention will be directed to the army of men and women who for the most part do the work, namely, the permanent civil service. Before coming to this, however, we must notice some challenging problems and tendencies of the departments as a group.

Problems of  
administrative  
reorganization

First to be mentioned is the inevitable and ever-present question of structural and functional reorganization. Government being the dynamic thing that it is, the machinery through which it performs its services never becomes so balanced and efficient as not to require overhauling and readjustment; constant vigilance is necessary, indeed, to keep the instrumentalities of administration even measurably adapted to their tasks, and almost superhuman effort to preserve coördination and secure economy in the workings of a great administrative system as a whole. In the United States, this matter has been of the utmost importance for many years. Several of the individual states, *e.g.*, Illinois, New York, Virginia, and Colorado, have carried out extensive reorganizations, and under authority granted by Congress to the president in 1933 prompted in good part by imperative considerations of economy—a promising beginning has been made toward the reconstruction of the national administrative system so long and desperately needed.<sup>2</sup> Great Britain is not without similar problems. Even so cursory a survey of the existing administrative set-up as that given above brings to light duplications, questionable divisions of authority, and other actual or potential difficulties. Thus, the rivalries of three independent and mutually jealous defense services—Admiralty, War Office, and Air Office—

<sup>1</sup> The best brief survey of the British educational system in its governmental aspects is A. L. Lowell, *op. cit.*, II, Chaps. xlvii-l. The work of the Board of Education is described at length in L. A. Selby-Bigge, *The Board of Education* (London, 1927), in the Whitehall Series.

<sup>2</sup> F. A. Ogg and P. O. Ray, *Introduction to American Government* (4th ed.), 376-381. For a tabular view of changes made between March and October, 1933, on the basis of the grant of powers mentioned, see *Amer. Polit. Sci. Rev.*, Dec., 1933, 942-956. Cf. W. F. Willoughby, *Reorganization of the Administrative Branch of the National Government* (Baltimore, 1923).

produce conflicts and delays which a rather weak advisory Committee of Imperial Defense has never been able to avert. The extraordinarily wide range of regulative activities in the broad domain of industry are parcelled out, more or less haphazardly, among a dozen different departments and commissions with no provision whatever for coördination beyond the very limited amount that an overworked cabinet is able to supply. Factory inspection remains a function of the Home Office, although it would seem to belong in the Ministry of Labor, or even the Ministry of Health. The Ministry of Labor as now constituted has little or nothing to do with labor in agriculture, in mines, or in ships on the high seas. Departments like the Ministry of Health and Board of Education that have to do in a large way with supervising administration carried on through the local authorities frequently run into serious conflicts of jurisdiction or policy. The linking up of fisheries with agriculture in a single department is complained of by the fishing industry as unfair to its interests.

As time goes on and activities multiply, the natural tendency is to set off preëxisting boards, committees, or other branches as separate departments, as, for example, in the case of the recently created Dominions Office. Sometimes there is distinct gain in doing this; sometimes the creation of the new ministry means only the bringing together in a single establishment of more or less similar activities formerly carried on in a number of scattered departments. The best thought on the subject looks rather, however, to integration than to dispersion. While advocating the creation of at least one entirely new department, *i.e.*, a department of research and information, the most important official report thus far made on the subject urges a drastic reduction of the number of departments and a coördination of those that remain, on the general plan of the French system, or of the system adopted by those American states which have reconstructed their administrative machinery most completely.<sup>1</sup> As the experience of our own country abundantly shows, administrative reorganization on broad lines of preconceived principle is an exceedingly difficult thing to bring about. Vested official interests interpose obstacles; no plan can be adduced

Proposals for  
closer inte-  
gration

<sup>1</sup> *Report of the Machinery of Government Committee of the Ministry of Reconstruction*, Cmd. 9230 (1918). Cf. suggestions made in R. Muir, *How Britain Is Governed*, 108-113.

that is in every respect superior to all others; the public is usually apathetic. Even piecemeal reconstruction, however, often entails new departures of considerable significance.

Increasing  
use of advi-  
sory com-  
mittees

An interesting and relatively new development in connection with the executive and administrative work of the government is the creation of standing advisory committees. Such committees may be intended to serve the cabinet as a whole, and through it, of course, Parliament as well; or they may function simply in relation to a particular department or office. The best illustrations of the former type are (1) the Committee of Imperial Defense (dating from 1904), which, as has been pointed out, is not strictly a cabinet committee, but rather a body consisting in part of cabinet officers, but also in part of other persons, sometimes including representatives of the dominions, and charged with investigating, reporting, and recommending on all questions of national and imperial defense, and (2) an Economic Advisory Council, into which a cabinet committee of scientific and civil research was transformed by the second Labor government in 1930, and charged with studying and reporting on commercial, industrial, and other economic problems of general interest.<sup>1</sup>

Equally important, however, is the rise of advisory committees attached to particular departments. There has never been anything to prevent department heads and other officers from conferring informally with individuals or groups outside of the public service, and consultations of the kind must often have taken place. As long ago as 1899, provision for departmental advisory committees began to be made by statute—first in an act of the year mentioned creating the present Board of Education, and later in the Trade Boards Act of 1909, the National Insurance Act of 1911, and one or two other measures. During the war years, large numbers of such committees were provided for by executive orders, without express statutory authority; and beginning again with acts of 1919 relating to the ministries of Transport, Health, and Agriculture and Fisheries, extensive statutory authorizations were made. The Machinery of Gov-

<sup>1</sup> Cf. the national economic council of republican Germany (pp. 686–687 below). The British council consists of the prime minister as ex-officio chairman; the Chancellor of the Exchequer and three other ministers, also ex-officio; such other ministers as the prime minister may name; and varying representatives of business, banking, cooperative, trade union, scientific, and other interests.

ernment Committee, already mentioned, warmly endorsed the advisory committee plan, "so long as the advisory bodies are not permitted to impair the responsibility of ministers to Parliament"; and the general testimony is that the committees are rendering good service, not only by bringing to the departments helpful information and advice, but by inspiring greater public confidence in administrative authorities as being guided by such information and advice rather than by sheer theory or bureaucratic presuppositions. It goes without saying that the committees have no power to direct or control administrative work, or to dictate policy. Their business is solely to discuss and advise.<sup>1</sup>

Turning from structural to functional aspects of the departments, we encounter two related yet differing developments that not only have of late attracted a great deal of attention, some of it decidedly unfavorable, but in the view of competent scholars constitute the most significant changes in the English constitutional system since Dickey's classic description was written. One, *i.e.*, the delegation of legislative power to administrative authorities, has to do with the relations between the executive establishments and Parliament, or, as English writers would be likely to say, between "Whitehall and Westminster"; the other, *i.e.*, the turning over of judicial power to the departments, or to tribunals which the departments control and sometimes even create, materially affects the relation between the executive establishments and the courts.

In earlier centuries, Parliament, as we have seen, slowly gathered to itself ample powers of legislation, and the day came when it was sturdily contended that no law could properly be made except with parliamentary sanction. At no time did this mean that all laws were actually and literally made by Parliament; for the crown clung resolutely to its ancient law-making authority, and Parliament was always obliged, or at all events found it expedient, to tolerate, and even to recognize, that authority within certain bounds. As late as the seventeenth century, the crown issued proclamations and enforced them as law, on the sole basis of prerogative; and, as every student of

Growth of  
administrative legisla-  
tion

<sup>1</sup> J. A. Fairlie, "Advisory Committees in British Administration," *Amer. Polit. Sci. Rev.*, Nov., 1926. Committees of the sort are employed most extensively at present in the work of the Board of Trade.

the period knows, the practice became one of the principal points of contention between the Stuart kings on the one side and Parliament and the judges on the other. So far as independent and autocratic royal legislation was concerned, the matter was settled by the triumph of the parliamentary cause; from 1689 onwards, it was a fixed principle of the constitution that laws could be made only by Parliament or by virtue of authority, express or tacit, coming from that source.

Parliamentary delegation of legislative power

Even before this turning point was reached, however, it was found both convenient and necessary for Parliament to delegate the actual exercise of certain law-making powers to the crown, and almost at once after the Revolution the issuance of orders in council in pursuance of authority conferred at Westminster—"statutory orders," that is to say, as distinguished from "prerogative" orders<sup>1</sup>—became a familiar, even if not frequent, event. Through the eighteenth century, and well into the nineteenth, Parliament granted such authority sparingly, preferring, and in those days having the time, to legislate directly even upon detailed matters of an essentially administrative nature. After 1832, however, when great fields of governmental regulation and administration—poor relief, public health, factory inspection, transportation, education—were newly entered or subjected to new forms of control, acts delegating powers to make rules having the force of law multiplied rapidly; and by 1893, when a Rules Publication Act undertook to regulate certain features of the procedure involved, the volume of such rules had come to be truly impressive. Since the date mentioned, the development has continued on even larger lines, notably during and since the World War. In a single year (1919), no fewer than 60 out of 102 public acts passed by Parliament delegated legislative power to some subordinate authority; in a more recent year (1927), 26 out of a total of 43 acts—a year during which, while Parliament was passing the said 43 acts, the departments were issuing no fewer than 1,349 different sets of orders or regulations. The upshot is that in numerous broad

<sup>1</sup> Prerogative orders did not wholly cease, and to this day "prerogative legislation," *i.e.*, orders issued, through one channel or another, by the crown, by virtue of original authority which Parliament has never sought to take away, is listed separately in the annually published volume of Statutory Rules and Orders. A good illustration is the orders issued by the Colonial Office for colonies which have no legislatures.

fields, *e.g.*, agriculture, industry, poor relief, public health, and education, regulation today is far more largely by administrative rules and orders than by statute—and not merely “orders in council,” but rules laid down by particular executive departments, by officers or branches thereof, or even by local (county or borough) authorities to which the rule-making power, in lesser matters, has trickled down from above. So far, indeed, has the delegation of legislative power been carried that Parliament is found not only leaving it to administrative authorities to supplement and fill out the broad terms of statutes as enacted, and sometimes to fix the dates at which various portions of statutes shall take effect, but even in occasional instances authorizing ministers or departments to modify (within usually some stipulated bounds) the terms of statutes according as they may find “necessary and expedient.”<sup>1</sup> Forty years ago, the enactment of “skeleton” legislation by Parliament, with the intention that it should be filled out and applied by administrative officials, was regarded as peculiarly characteristic of France, Italy, and other Continental countries. It still is prevalent enough there. But nowadays it is almost, if not quite, as common on the other side of the Channel. Even in the United States, where, in pursuance of the principle of separation of powers, it is plainly stipulated that all legislative powers granted in the national constitution shall be vested in Congress,<sup>2</sup> and where, consequently, the delegation of such power is presumably impossible, administrative legislation has assumed a high degree of importance.<sup>3</sup> In Britain, there is no constitutional obstacle; and delegation—frank and unashamed, as contrasted with roundabout and surreptitious delegation in the United States—is going on in steadily increasing amount.

If anyone ever supposed that powers of a legislative nature could be kept exclusively in the hands of Parliament, Congress, or any other important legislative body, such a view is entirely untenable now. To start with, no legislature—certainly not

Reasons for  
delegation

<sup>1</sup> Such authority was conferred, for example, in the Unemployment Insurance Act of 1920 and the Rating and Valuation Act of 1925.

<sup>2</sup> Art. I, § 1.

<sup>3</sup> See J. A. Fairlie, “Administrative Legislation,” *Mich. Law Rev.*, Feb., 1920; J. Hart, *The Ordinance-Making Powers of the President of the United States* (Baltimore, 1925); and J. P. Comer, *Legislative Functions of National Administrative Authorities* (New York, 1927).



the British Parliament—has time in which to consider, or even to act perfunctorily upon, all of the multifarious questions that must somehow be settled as the day-to-day business of administration proceeds. Often as not, the legislature is not in session when decisions must be reached. Sometimes, too, the legislature cannot agree, and finds it easiest to pass on a given problem to other hands. Most important of all, the matters to be regulated are increasingly complicated and technical, quite beyond the knowledge and experience of the average run of legislators, and capable of being dealt with intelligently only by administrators and technicians on the basis of first-hand experience and scientific expertness, and under conditions such that if rules adopted do not work out as expected, they can more easily be modified than if formal legislation were required. Under these conditions, Parliament perforce contents itself repeatedly with statutory enactments laying down broad principles, policies, and objectives, leaving it to the king-in-council or to an appropriate department to supplement them with orders and regulations.

Pros and cons  
of the matter

Although by no means a new phenomenon, the practice of delegation has so grown in recent times as to rouse misgivings and draw forth some vigorous criticism. Parliament, it is charged, is gradually restoring to the crown by statute the arbitrary powers of which earlier Parliaments stripped it, and thus, whether deliberately or unconsciously, is abdicating its own proper functions. Urging it along this perilous road are the ministers, who originate most of the important public measures, who have a definite interest in obtaining as much freedom as possible for the executive authorities to legislate independently, and who are not above slipping into bills clauses, frequently unnoticed by anyone else, conferring the coveted powers. Few members of Parliament, we are told, have any real understanding of how far matters have actually gone. Sticklers for the preservation of full parliamentary powers, and for the principle of separation, can undoubtedly make out a rather sharp indictment. There are, however, other things to be said. In the first place, notwithstanding delegation, Parliament remains the ultimate authority. Neither king-in-council nor any department has original, independent law-making authority enabling it by means of rules and orders to override the will of Parliament on any matter on which the latter chooses to take a position. "All rules," reads a noted decision of the Judicial

Committee on the point, "derive their validity from the statute which creates the power [to make them], and not from the executive body by which they are made."<sup>1</sup> In the second place, many, and indeed an increasing proportion of, rules and orders become finally valid and effective only upon being confirmed by resolution passed by both houses of Parliament. This check is often more a matter of form than anything else, say the objectors, and rightly. Nevertheless, the power of veto is there, to be exercised whenever desired.<sup>2</sup> Finally, orders and rules enjoy no such immunity from judicial review as do statutes. No court will hold any act of Parliament *ultra vires*; but any judge, high or low, before whom a case is brought turning on the enforcement of an administrative rule or order may inquire into the authority by which the rule or order was issued and, upon finding it wanting, decline to apply the order to the case before him.<sup>3</sup> Even war-time orders in council issued under the broad authority of the Defense of the Realm Acts of 1914-15 fell to the ground in this way.<sup>4</sup>

Hardly less interesting than the growth of administrative legislation is the development of what may, by analogy, be termed

<sup>1</sup> The Zamora (1916). See D. L. Weir and F. H. Lawson, *Cases in Constitutional Law*, 66-70.

<sup>2</sup> It has been proposed to set up sessional committees in both houses of Parliament to scrutinize all rules and orders before they go into effect and report to Parliament such as appear of doubtful validity. No action of the kind has, however, been taken.

<sup>3</sup> The only exception arises in cases in which regulations are given immunity by provision of the covering statute that they "shall have effect as if enacted in this act." It must be conceded, however, that judicial review is being weakened all along the line by the growing practice of delegating powers in terms so vague that court review under the doctrine of *ultra vires* becomes impossible.

<sup>4</sup> Interest in the subject of administrative legislation was raised to a lofty pitch by a challenging book published at London in 1929 by the Lord Chief Justice, Lord Hewart of Bury, under the title of *The New Despotism* (see especially Chap. vi). Just as this volume appeared, the Labor government set up a commission, under the chairmanship of the Earl of Donoughmore, to investigate both administrative legislation and administrative justice; and in 1932 this body presented a *Report of the Committee on Ministers' Powers*, Cmd. 4060, the second section (pp. 8-70) of which surveys the growth and character of administrative legislation, in general approvingly, although with suggestions for needed safeguards. J. Willis, *The Parliamentary Powers of English Government Departments* (Cambridge, Mass., 1933), is an admirable treatise on the subject; and C. M. Chen, *Parliamentary Opinion of Delegated Legislation* (New York, 1933), brings to light cross currents of thought in Parliament concerning it. An older, but still standard, work is C. T. Carr, *Delegated Legislation* (Cambridge, Eng., 1921), and a useful brief survey is J. A. Fairlie, *Administrative Procedure in Connection with Statutory Rules and Orders in Great Britain* (Urbana, 1925). On delegation of powers in general, see article by E. Bonte-cue, in *Encyc. of the Soc. Sci.*, V, 65-67.

Develop-  
ment of ad-  
ministrative  
justice

administrative justice. It is true that there never has been, and never will be, any clear line of demarcation between administrative functions and judicial functions; long before our own day, administrators judged and judges administered. But the point is that, largely as a result of the social legislation of the past fifty years, the judicial activities of administrative authorities in, or under the control of, the executive departments have enormously increased, not by accident, but by deliberate provision made in parliamentary statutes. For example, the housing acts make the Ministry of Health the appellate body in regard to a great series of important matters closely affecting the rights of owners of slum property and workmen's dwelling houses; and, the department having laid down requisite rules on the subject, appeals are decided by its officials in accordance with them and can be carried to no court of law. Again, the Board of Education hears and gives final decision upon appeals turning upon essentially judicial questions arising between local educational authorities and the managers of "non-provided," *i.e.*, denominational, schools. The Ministry of Transport similarly disposes of appeals in regard to the granting of various kinds of licenses and in respect to the supplying of electrical power; and the Home Office exercises numerous functions of a judicial nature, involving intricate questions of law and fact, "ranging from the decision as to whether a man is or is not an alien, and if an alien, of what nationality, to the commutation of the death penalty in capital offenses."<sup>1</sup> Hardly any important department—indeed, hardly any major branch of a department—fails in these days to have a wide range of judicial powers which it exercises under statutory authority and in complete independence of the courts of law.

Differences  
of opinion  
here also

Those who object to the growing exercise of legislative power by administrative authorities usually object even more strongly to "administrative justice." Under the fundamental English principle of the rule of law,<sup>2</sup> they say, it is the right of every British subject to have disputes of a legal nature in which he is involved heard and decided by the regular judicial courts. As things have been going, however, he is increasingly likely to find that when he desires to contest a rule or decision of an administrative authority, in defense of what he regards as his rights or interests, the

<sup>1</sup> W. A. Robson, *Justice and Administrative Law* (London, 1928), 24.

<sup>2</sup> Cf. p. 380 below.

matter must be heard and settled, not by a regular judicial court, but by an official, or perchance by a quasi-judicial body, within the department under which the question has arisen. He is likely also to encounter procedures very different from, and more peremptory, than those of the regular courts. As a rule, he may not appear in person, be represented by counsel, or produce evidence; and if the case goes against him, he usually has no opportunity to appeal, unless perhaps only to a higher administrative authority. All this, it is charged, is out of line with historic and fundamental English principles—an unhappy development by which the bureaucracy is gaining the whip-hand over the judiciary. Here again, there are, of course, arguments in rebuttal: first, that what is complained of is nothing new, since administration and justice have always been to a considerable extent commingled; second, that the swift expansion of social legislation in the past half-century has made the growth of judicial functions in the hands of administrative authorities necessary and inevitable; and third, that in wielding such powers these administrative authorities have achieved, and are achieving, socially desirable ends which are beyond the reach of the courts of law as at present constituted. The problem is an intricate one, too much so to be dealt with adequately here. It will challenge attention increasingly, however, not only in Britain, but also in the United States, where—once more notwithstanding our vaunted separation of powers—it has presented itself in many guises and forms.<sup>1</sup>

<sup>1</sup> Lord Hewart's *The New Despotism* is devoted especially to this subject, and section 3 (pp. 71-118) of the *Report of the Committee on Ministers' Powers* considers it concisely. W. A. Robson, *Justice and Administrative Law* (cited above) is a first-rate treatise, with Chaps. i, iii, and vi especially to be recommended. On developments in the United States, see J. Dickinson, *Administrative Justice and the Administration of the Law* (Cambridge, Mass., 1927); W. C. Van Vleck, *The Control of Aliens* (New York, 1932); G. C. Henderson, *The Federal Trade Commission* (New Haven, 1924); and C. McFarland, *Judicial Control of the Federal Trade Commission and the Interstate Commerce Commission, 1920-1930* (Cambridge, Mass., 1933).

## CHAPTER VIII

### THE PERMANENT CIVIL SERVICE

Some 350,000 men and women who, under the general direction of the ministers, carry on from day to day the multifold activities of government constitute what is known as the permanent civil service. Less in the public eye than the ministry, this large body of functionaries is not a whit less necessary to the realization of the purposes for which government exists. Indeed, there are those who, like the British Labor statesman Sidney Webb, regard administration as the very summation of government; and while there is a bit of exaggeration in this, there can be no denying that without the all-pervading and unremitting work of the civil servant, government would be only a jumble of rules and regulations suspended in mid-air, without force or effect upon the people. Our next concern must therefore be to see how the permanent service is recruited, classified, controlled, disciplined, compensated, and fitted into the general scheme of things.

Ministers  
and permanent civil  
servants  
contrasted:

1. As to  
political  
status

Certain sharp distinctions between ministers and permanent civil servants at once engage attention. The first turns on the fact that the minister is a *political* official while the civil servant is not. Most ministers belong to the House of Commons, to which they have been elected as party men; if in the cabinet, they are likely to be recognized party leaders; in any event, they bear a party label and remain in office only so long as their party stays in power. The permanent civil servant, on the other hand, derives his status mainly from the fact that he is non-political. He is not permitted to be a member of the House of Commons, or even to become a candidate for a seat without first resigning his civil service post. He may not make a political speech, print a partisan article or tract, edit or publish a party newspaper, canvass for a party candidate, or serve on a party committee. He may not seek to wield partisan influence in any way whatsoever except by going quietly to the polls and casting his ballot. Indeed, in times past revenue collectors, police, and one or two other groups of public employees have actually been disfran-

chised, although none are so penalized today. Hedged about by multiplied parliamentary statutes, orders in council, and restraining rules laid down by the Civil Service Commission, the civil servant (if he lives up to what is expected of him) merely watches the tide of political life flow past him without once dipping into it except to vote. The theory is that subordinate employees of the state—having to do, not with the control of policy (however much they may in point of fact contribute indirectly to policy-making), but only with executing the laws and transacting the public business—ought to be in a position to work with the government of the day in full loyalty, consistency, and sincerity, regardless of which party is in power, and that they could not do this if they were to take an active and public part in favor of one party and its candidates as against another.

There is another way in which ministers and permanent civil servants differ. The former are, in the main, amateurs, while the latter are, or are in process of becoming, experts. Anyone who has read what has already been said about the ministers will understand why they are, and with rare exceptions must be, amateurs. They are appointed with some regard, of course, for their personal aptitudes, but often, if not usually, for reasons that have little connection with the nature of the work to be done in their particular departments; frequently they have had little or no experience with governmental administration in any form. The departments over which they find themselves placed have in most cases come to number so many different services that no person could possibly qualify as an expert in all. While in office, ministers, furthermore, must devote so much of their time to cabinet, parliamentary, party, social, and other activities outside of the fields assigned them that they can in fact learn little about their departments except in certain larger aspects. They are occasionally shifted from one post to another, and in any case have only the precarious, and usually rather brief, tenure which the political character of their positions entails. When the formation of a Labor ministry became imminent early in 1924, there was much apprehensive comment to the effect that it would be impossible for the leader of a party that had never been in power to assemble a group of ministers having the requisite acquaintance with the business of the government, to say nothing of the necessary experience in handling it. There was, of course, some ground

2. As to the  
quality of  
expertness

•

for this feeling, because in the nature of the case there were not experienced Labor men, as there would have been experienced Conservatives and Liberals, to be drawn upon. In point of fact, however, a ministry of any party whatsoever will contain a good many men for whom the connections and responsibilities assigned are a novelty—men who know next to nothing about the branch of government of which they suddenly find themselves in charge. Merchants, lawyers, country squires, professional politicians, trade union organizers, with an occasional journalist and university professor—these, rather than permanent under-secretaries, assistant under-secretaries, and bureau chiefs who have risen from the ranks, are the materials of which ministries are made. Ministers are generally laymen, and make no pretense to being anything else.

Should the  
ministers be  
experts?

The apparent incongruity of such a state of things has stirred no small amount of ridicule and complaint. "We require," says one critic, "some acquaintance with the technicalities of their work from the subordinate officials, but none from the responsible chiefs. A youth must pass an examination in arithmetic before he can hold a second-class clerkship in the Treasury; but a Chancellor of the Exchequer may be a middle-aged man of the world, who has forgotten what little he ever learnt about figures at Eton or Oxford, and is innocently anxious to know the meaning of 'those little dots,' when first confronted with Treasury accounts worked out in decimals. A young officer will be refused his promotion to captain's rank if he cannot show some acquaintance with tactics and with military history; but the Minister for War may be a man of peace—we have had such—who regards all soldiering with dislike, and has sedulously abstained from getting to know anything about it."<sup>1</sup> In France and other Continental states it has been not uncommon to put military and naval men in charge of the war and marine ministries; and even in the United States there has been a growing demand that the men whom the president places at the head of at least a few of the executive departments, e.g., Agriculture and Labor, shall have had professional experience related to the work which they will be expected to supervise.

Reasons why  
the present  
practice is  
best

There is no gainsaying that, other things being equal, the department head who is well informed on the work to be carried on under his direction is to be preferred. But this does not mean

<sup>1</sup> S. Low, *Governance of England* (rev. ed., 1914), 201-202.

that he can, or should, be expected to qualify as an expert or technician. Dozens of more or less related, but different, activities are to go on simultaneously in the department, each requiring a high order of technical proficiency. Neither the minister in charge nor any other man can be a master of all; and so far as the minister is concerned it is unnecessary that he be a master of any, because—and it cannot be too strongly emphasized—his business is not to do the work of the department but only to help frame general policies and see that they are carried out by the staff employed for the purpose. Indeed, there are strong reasons why it is better for him to be a layman, brought in from the outside. He must be able to see the department as a whole and in its relations to other departments and branches of the government. He must have a sense of proportion and values requisite to guide him in keeping the department within its proper sphere. He must serve as the intermediary between the department and the House of Commons, keeping the one in touch with public opinion and the other informed on administrative needs and problems. Though war minister, he must have the interests of more than the military men at heart; though minister of agriculture, he must serve others besides the landowners. These larger things he would be less adapted to do if he had grown up in the department and had only a departmental point of view. On general principles, too, it is often a good thing to have the work of experts supervised by laymen. If the supervision is at all tactful and sympathetic, less friction is likely to result than where experts are set to supervise experts.<sup>1</sup>

The outstanding feature of British executive and administrative organization is, therefore, the association together of (1) an amateur, lay, political, non-permanent, directing body of officials and (2) an expert, professional, non-political, permanent, subordinate staff. "The former," as an American scholar writes, "provides the democratic element in administration; the latter the bureaucratic. Both are essential—one of them to make a government popular; the other to make it efficient. And the test of a good government is its successful combination of democracy with efficiency."<sup>2</sup> The relations of the two elements, *i.e.*, minis-

Relations of  
ministers  
with their  
subordinates

<sup>1</sup> For statements from high sources defending the existing practice, see Ramsay MacDonald, *Socialism and Government* (London, 1909), II, 34–35, and S. and B. Webb, *A Constitution for the Socialist Commonwealth of Great Britain*, 66–68. Cf. H. J. Laski, "The Limitations of the Expert," *Harper's Mag.*, Dec., 1931.

<sup>2</sup> W. B. Munro, *The Governments of Europe* (rev. ed.), 93.



ters and subordinates, with each other in the day-to-day workings of a department vary with the personalities and circumstances involved, but must necessarily be intimate and continuous. As spokesman in the department for the cabinet and Parliament, the minister directs and instructs; to a degree, he determines policy and imposes it upon those under him. On the other hand, as an amateur with little time for delving into the minutiae of department business, he cannot go far in any direction without assistance from the experts. On them he must rely for information about matters of which he knows little or nothing; from them he must seek advice; from them, indeed, he must continually accept guidance.<sup>1</sup> Well aware of their own superiority in experience, and sometimes in ability as well, permanent under-secretaries and other members of the permanent staff have no hesitation about putting forward their own suggestions, arguments, and admonitions; and as a recent English writer observes, the minister will, "in ninety-nine cases out of a hundred, simply accept their views and sign his name on the dotted line."<sup>2</sup> Of course, no minister ever acknowledges any *obligation* to accept and act upon the views of his subordinates, however urgently pressed. It is he, not they, that will have to justify to the cabinet whatever decisions are made, and also bear responsibility for them on the floor of an inquiring, and perhaps censorious, House of Commons; and the last thing that he would surrender would be the right to make the decisions himself. If things go well, he gets the credit; if ill, he shoulders the blame. So far as responsibility goes, the minister is the department. Nevertheless, to a far greater extent than is commonly appreciated, the skilled and permanent service contributes to the shaping both of departmental, and of broader national, policy. The real authorship of many a bill introduced and pushed in Parliament by the ministers is to be sought, not among the ministers themselves, but among their subordinates in the departments.

"Civil service reform"

A moment's reflection on the matter would suggest that, while in the nature of things the political, ministerial members

<sup>1</sup> Bernard Shaw's scoffing remark in the preface to his *The Apple Cart* that "the nearest thing to a puppet in our political system is a cabinet minister at the head of a great public office," while of course an exaggeration, nevertheless contains no small amount of truth.

<sup>2</sup> R. Muir, *How Britain Is Governed*, 56. •

of the public service must be selected in quite a different way, the great mass of non-political, professional, permanent officials and employees might very properly be recruited on the basis of knowledge and capacity as tested in formal examinations; and the next outstanding aspect of the permanent service to be noted is the wide application of what we in America are accustomed to call the "merit" principle. Like ourselves, the British people came by this plan only after a long fight for "civil service reform." They attained it, however, a generation earlier than we, and the victory of the cause in their country did much to promote the hard-won, but substantial, triumphs which it has achieved on this side of the Atlantic.<sup>1</sup> In Britain, as with us, the fight had to be made against various flagrant and insidious forms of what is commonly known as "patronage." Government in Britain in the eighteenth and earlier nineteenth centuries was, in all of its phases, decidedly aristocratic. Legislation at Westminster was chiefly in the hands of the leading members of a few governing families; justice and local government were carried on almost entirely by propertied justices of the peace; and the national administration was entrusted mainly to persons who got their places by some sort of favoritism rather than in recognition of any particular capacity or competence. Many, if not most, appointees to administrative posts not only were amateurs, like the ministers, but had no claims whatever to preferment other than that they were importunate constituents of influential members of Parliament--perchance useful supporters at election time. Many were younger sons of powerful landholders or politicians; many were needy relatives or other more or less unpromising members of a magnate's entourage; many performed public duties on only a part-time basis, as a sort of side-line.<sup>2</sup>

"Clean sweeps," of the sort that came to be the fashion in the heyday of the American spoils system were, indeed, never indulged in. The Englishman thought of a man, once in a public office, as having somewhat of a vested right in it. There was

Former prevalence of patronage

<sup>1</sup> Thus the important legislation known as the Pendleton Act, in 1883, was helped along appreciably by the publication in 1880 of a book entitled *The Civil Service in Great Britain*, by Dorman B. Eaton, an ardent reformer whom President Hayes commissioned to study the advances made in Great Britain up to that point.

<sup>2</sup> John Bright once referred to the civil service of his time as "the outdoor relief department of the British aristocracy."

no such fear of entrenched office-holders as found frequent expression in America, especially in Jacksonian days; besides, under a cabinet system, with a change of government possible at almost any moment, the principle of rotation, if extensively applied, would, as any sane man could see, keep the whole governmental system constantly on the verge of chaos. Nevertheless, there were some removals on partisan and personal grounds. And when desirable places fell vacant, or new ones were created, the appointments almost invariably went to sons of the aristocracy or other place-hunters selected for reasons having little or nothing to do with competence. Promotions, too, were largely a matter of political or personal influence.<sup>1</sup>

The process  
of reform

High-minded heads of departments protested against a system which swamped the services with inefficient and lazy employees, and lay critics like Carlyle poured out the vials of their wrath upon both the purveyors and the beneficiaries of patronage. Not until 1833, however, was it found possible to make a start in the direction of reform, and then only in a very modest manner in connection with appointments in British India. Not until past the middle of the century, following the submission of a challenging report by a Treasury commission, could anything be done to improve matters in the services at home.<sup>2</sup> Even then, the country did not go over to a merit system immediately, or by a single leap. Nevertheless, in 1855 an order in council created a civil service commission of three members charged with administering examinations to candidates in junior positions in all departments; the pass examinations introduced at the outset presently began to give way to competitive tests; and a Superannuation Act of 1859 supplied a powerful sanction by providing that thereafter no person (with certain exceptions) should be regarded as entitled to a retirement pension unless

<sup>1</sup> The general state of the service at the middle of the nineteenth century is reviewed in R. Moses, *The Civil Service of Great Britain* (New York, 1914), Chap. i. The situation is portrayed half-humorously in Anthony Trollope's novel, *The Three Clerks*; and devotees of Dickens will have no difficulty in recalling the "circumlocution office" of *Little Dorrit*.

<sup>2</sup> The report proper was issued late in 1853; with comments by various eminent people, it was presented to Parliament in 1854 under the title of *Report and Papers Relating to the Reorganization of the Civil Service*. Macaulay tells us that, when first published, it was laughed at in the clubs and had little support in the House of Commons. It is, nevertheless, the foundation of Britain's excellent civil service system today. For an account of it, see R. Moses, *op. cit.*, Chap. iii.

he should have been admitted to the service with a certificate from the commissioners. Finally, in 1870, an epoch-marking order in council completed the edifice by making open competitive examinations obligatory practically throughout the service. Since that time, the merit plan of recruitment and promotion has applied, speaking broadly, to the whole body of national administrative officers and employees except only employees with purely routine duties at the bottom of the scale and a handful of officers at the top—chiefly the ministers—who have to do directly with determining policy, and who accordingly are properly kept on a different basis. In the United States, only about three-fourths of the more than 600,000 officers and employees of the national government are appointed and promoted in this way; immigration commissioners, collectors of customs and of internal revenue, and field officers of the Department of Justice are among the large groups of relatively unimportant, non-policy-determining officials who continue to be political appointees.<sup>1</sup>

One will not be surprised to learn that every step in the British reform was resisted stoutly by politicians and others, who had something to lose by a change, and that during its first twenty years the Civil Service Commission was the object of almost continuous criticism and attack. There never was really serious danger, however, of a reversion to the earlier scheme of things; and from 1870 onwards it was a matter merely of studying and experimenting with modes of bringing the system up to the desired efficiency and keeping it abreast of the times. To this end, searching inquiries were made by successive commissions, notably in 1875, in 1884-90, in 1910-14, in 1918, and in 1929-31;<sup>2</sup> and large numbers of orders in council were issued, e.g., one of 1910 repealing previous orders and consolidating those remaining, and another of 1920 largely superseding the measure of ten years before. In the whole process, Parliament played a distinctly minor rôle; indeed, the fashion in which the two houses kept their hands off the problem and allowed the

<sup>1</sup> F. A. Ogg and P. O. Ray, *Introduction to American Government* (4th ed.), Chap. xix.

<sup>2</sup> The report of the Tomlin Commission, submitted in 1931, Cmd. 3909 was particularly significant because of dealing with many newer post-war phases of the service. For brief comment, see L. D. White, "The British Royal Commission on the Civil Service," *Amer. Polit. Sci. Rev.*, Apr., 1932.

entire present-day merit system to be built up upon the basis of executive investigations, plans, and orders may well be cited as an illustration of that legislative abstention from direct control of administration which so sharply differentiates methods at Westminster from those at Washington. The executive authorities, standing closer to the realities of the problem, quite outran parliamentary, if not also popular, sentiment on the subject, and, almost before the country was aware of what was happening, gave it the first truly expert and professional civil service known to the Western world.

Present extent of the service

The broadening and deepening of the range of government activities in the last hundred years is reflected strikingly in the creation of new executive departments and offices, as outlined in an earlier chapter. It is similarly evidenced by the growth of the civil service. In 1832 the total number of civil servants—counting all members of administrative and clerical staffs, including postal officials, but excluding laborers (for whom there are no figures)—was 21,305.<sup>1</sup> By 1851 the figure had risen to 39,147, and by 1891, to 79,241; in 1914, on the eve of the World War, it was 280,900; in 1922, after a considerable decline from the peak reached during the war, it was 317,721; at the present day, it fluctuates around 350,000.<sup>2</sup> Of this latest total, upwards of two-thirds are employed in carrying on the varied operations of the Post Office; of the remaining third, approximately half are engaged in work in and about Whitehall, the focal center of the administrative system, and the other half are in service elsewhere throughout the country and in foreign lands. More than 23 per cent of the whole number are women. As compared with France, Great Britain has a comparatively small force of national civil servants.<sup>3</sup> This is because, government being much less centralized, important groups, *e.g.*, school teachers, which in France belong to the national service function in Britain

<sup>1</sup> To avert possible confusion, the reader may be reminded that only the national civil service is under discussion here. On the "municipal service," as Englishmen commonly term the employees of counties and boroughs, see pp. 398-400 below.

<sup>2</sup> These figures are only approximate, but they serve for purposes of comparison. Work-people employed in dockyards and other government industrial establishments would add about 125,000 to the present-day figures. They, however, do not belong to the civil service proper.

<sup>3</sup> See pp. 512-513 below.

under the counties and boroughs only. Even so, and taking no account of the armed forces, one Britisher out of every hundred is on the national pay-roll.

In earlier days little or no attempt was made to group the members of the civil service into definite classes. After 1870, however, it became necessary to distinguish between the higher posts, involving discretionary powers and requiring a thorough education, and inferior positions involving only work of a clerical nature; and gradually a scheme of classification into first or higher division clerks, second division clerks, assistant clerks, boy clerks, and women clerks was worked out, although promotion from one class to another was rare and the articulation of the different parts of the system was generally unsatisfactory. A reorganization which was definitely in prospect at the time when the World War broke out was naturally delayed; but it was actively undertaken in 1918, and by 1922 it had been carried out in most of the important departments. A description of the classification now prevailing would be excessively technical for our purposes. Suffice it to say that the present general (as distinguished from departmental) classes are: (1) a pivotal and directing administrative class (some 1,200), corresponding to the old first division, open alike to men and women, and recruited both by competitive examination and by promotion; (2) an executive class (some 4,350) doing the work of the supply and accounting departments and of other executive or specialized branches of the service, and recruited normally by promotion; (3) a much more numerous clerical class, covering the lower range of the old second class, with the addition of the assistant clerks and the boy clerks, and subdivided into (a) the higher clerical class and (b) the clerical class proper; (4) a writing assistant class, recruited only from women, and engaged in copying, filing, addressing, counting, and other simple and largely mechanical work; and (5) a class of typists and shorthand typists, also recruited exclusively from women and girls. Each class has a prescribed salary scale and definite standards for pay increase and promotion.

Classification  
of employees

Responsibility for the general administration of the civil service rests with the Treasury, aided by a Civil Service Commission charged with maintaining standards and testing qualifications for appointment. The key position which the Treasury occupies

The Treasury  
and the civil  
service

among the executive departments—more particularly, the supervision which it wields over their expenditures—would of itself entail a good deal of control over the conditions under which their work is carried on. But an order in council of 1920, consolidating a long line of previous orders, authorizes this purse-holding *pater familias* of the governmental system to “make regulations for controlling the conduct of His Majesty’s civil establishments and providing for the classification, remuneration, and other conditions of service of all persons employed therein, whether permanently or temporarily”; and as a result, practically every phase of civil service organization and activity—the number and rank of civil servants in each department, salary bases and ranges, efficiency ratings, promotions, pensions—is subject to whatever degree of Treasury regulation the authorities of the department care to impose. Even rules and regulations for admission to the service as laid down by the Civil Service Commissioners, including types, times, and places of examinations, are effective only when given Treasury approval. Since 1919, Treasury control has been centralized in an “establishments department” which combines functions of personnel management diffused in the United States among the Bureau of the Budget, the Civil Service Commission, and the Bureau of Pensions.<sup>1</sup> Each larger department has an “establishment” branch of its own for the handling of matters not requiring attention elsewhere, and the heads of these various branches form a committee which advises and assists the establishment department of the Treasury.<sup>2</sup>

The Civil  
Service Com-  
mission

The pioneer order in council of 1855 created a central board of examiners of three members, and to this day the authority which makes and executes rules for entry into the service has been His Majesty’s Civil Service Commissioners, commonly referred to simply as “the Commissioners,” or the Civil Service Commission. Appointed by the crown—which in practice means by order in council after the cabinet has duly consulted with the higher Treasury officials—the commissioners are usually persons of long experience in the service; and they hold office until eligible for retirement under regular civil service rules. The most recent official definition of the duties of the Commis-

<sup>1</sup> Also the Bureau of Efficiency until that establishment was abolished in 1933.

<sup>2</sup> See T. L. Heath, *The Treasury*, Chap. x.

sion is contained in the order in council of 1920 already cited. In summary, they are: (1) to "approve" the qualifications of "all persons<sup>1</sup> proposed to be appointed, whether permanently or temporarily, to any situation or employment in any of His Majesty's civil establishments"; (2) to make regulations prescribing the manner in which persons are to be admitted to the civil establishments and the conditions on which the commissioners may issue certificates of qualification; and (3) to publish in the *London Gazette* notice of all appointments and promotions with respect to which certificates of qualification have been issued. As has been explained, the Commission's work is subject at all points to Treasury approval; and of course it must be understood that actual appointments are made, not by the Commission, but by the appropriate department heads, again with Treasury approval. The Commission has nothing to do with classification, salary ranges, or discipline. Its business is solely that of examination and certification. In all that relates, however, to this important function of recruitment, it wields an authority which is rarely overborne; and the system of examinations which it has built up is one of the outstanding features of British public polity. During the calendar year 1927, it dealt with some 50,000 candidates (of whom almost 43,000 were given formal examination), and 16,540 positions were filled with persons certified by it.<sup>2</sup>

It must not be supposed that a single method of recruitment is employed for all branches and grades of the service. Quite the contrary. In the first place, tests may be applied (1) by written examination, in which, however, there may be an oral element, (2) by interview, the candidate conversing with a board of examiners, or (3) by a composite or mixed method under which personality is judged by means of interview and knowledge by written examination. In the second place, the competition may be held under regulations made by the Civil Service Commission and be open to all candidates who possess the qualifications laid down in the regulations; or it may be held under conditions prescribed by a department and restricted to candidates selected

Methods of  
recruitment

<sup>1</sup> With certain stipulated exceptions.

<sup>2</sup> By way of comparison, it may be noted that in the fiscal year ending June 30, 1930, the United States Civil Service Commission examined 287,357 persons, and 44,719 received appointment.



in advance by the department. To describe, one by one, the modes and processes employed in handling all of the types of cases arising from these various situations would lead us into an excess of technicality and detail, and it must suffice to call attention principally to certain general characteristics of the examination system, especially as applied in those parts of the service in which recruitment is most fully under the Commission's control.

Nature of examinations

Great changes have taken place in English civil service examinations since the time when Anthony Trollope was admitted to the secretariat of the Post Office on the basis of a test which consisted in copying out a leading article from a newspaper, in the course of which he misspelled several words and finally dropped a blot on the manuscript! Furthermore, the English method of examining for admission to the service is very different from the American. In this country, candidates are tested almost exclusively to find out how well they are qualified to perform the duties of the particular position or type of position which they seek. There is one examination for people who are interested in becoming letter-carriers, another for those who would like a job at book-keeping, and so on all the way round. The examinations are specific, practical, non-academic; and to the average American it seems both natural and proper that they should be so. The English examinations, however, aim, not at finding out how well an applicant could presumably discharge the duties of a given post if he were appointed to it tomorrow, but at measuring his intellectual equipment and general ability. Thus, candidates for higher clerkships are given the same examination, whether they propose to seek employment in the Treasury, in the Foreign Office, or in the Admiralty. The subjects in which they are examined are distinctly academic—including, in varying combinations, history, mathematics, ancient and modern languages, philosophy, economics, political science, natural science, and others—and are drawn almost entirely from the realm of the liberal, as opposed to the technical, studies. And the questions are of a sort which ordinarily can be answered only by an upper-group university graduate; indeed, most of them are furnished by Oxford, Cambridge, and other university professors.<sup>1</sup> It is true that there are examinations for lower

<sup>1</sup> Specimen sets of questions are given in R. Moses, *op. cit.*, 294-305.

grades of the service which are easy enough to be passed by persons with a good secondary-school education; yet even they are of an essentially academic rather than "practical" nature. Competition is keen and standards are high.

The English view of the matter is that it is desirable to get into the service people who, although they may at the moment know little or nothing about the duties of any particular position, nevertheless have education and capacity that will enable them to rise from lower to higher positions and to become increasingly useful servants of the state. Such people can be trusted to pick up in a very short time a sufficient knowledge of the special work with which they are to start. The main concern is that they be the sort that will prove capable of going on, some of them up to the under-secretaryships and other important offices which the British permanent service includes. From this it follows that much emphasis is placed upon the civil service as a career. Rarely is it entered today except by persons who have decided to make it a life work, who accordingly have subjected themselves to the arduous discipline involved in carrying out the necessary preparations, and who come to the service as young men or women (in the case of university graduates, they must not be more than 24 years old) who have looked to this alone, and not as middle-aged persons who have tried a number of other things and failed.<sup>1</sup>

Merits of the  
British and  
American  
systems

There is something to be said, of course, for both the American and British systems. The American is more democratic; it exacts little of the beginner in the way of knowledge, and it affords a haven for men and women of all ages who are presumably fitted to do some particular form of clerical or other work. This, however, is about all that can be said for it. The British system is less democratic. But it attracts to the public service men and women who, on the average, not only are younger and more energetic and flexible than American appointees but far better fitted by education, and probably native capacity as well, to become progressively able, useful, and responsible officials.

<sup>1</sup> For an official statement of the English point of view, see *Report of the Committee . . . [on Civil Service]*, Cmd. 8657 (1917), 10-13. The Tomlin Commission which investigated civil service conditions and problems in 1929-31 found prevailing methods of recruitment generally satisfactory. It may be noted that while, in making appointments, war veterans receive preferential treatment in some grades of the service, the practice is not carried as far as in the United States.

The American service is crowded with people who are perhaps adequately qualified for the clerical work that they do—and which they will keep on doing to the end of their days—but lamentably barren of first-rate material for such higher posts as bureau chief and assistant secretary. It is a rare thing in this country for university graduates to take civil service examinations except as candidates for a relatively small number of technical positions.

#### Promotions

A corollary of the principle that new appointees to the service shall be persons of demonstrated capacity for growth is the consideration that the way must be kept open for them to mount in the scale as experience fits them for more important duties. This means a scheme of promotions conceived in the best interests of efficiency and morale. The arrangements that have been arrived at for the various grades of the British service are rather too varied and technical to be described here. But they provide, in general, for promotion (except in the lowest grades) on the basis of service records rather than—as frequently in the United States—on that of written examination; they are administered, not by the Civil Service Commission, but by the several departments, with the aid of departmental promotion boards and under Treasury supervision; and they are generally thought to give fairer and more satisfactory results than in any other country.

#### Removals

As is suggested by the term “permanent civil service,” non-political officers and employees, once appointed, remain in the public employ until they die, resign, are removed for misbehavior, or reach the age of retirement. There is, it is true, no legal guarantee to this effect. Every member of the service is employed only “during the king’s pleasure”; so far as the law goes, any official or employee can be dismissed at any time, with no reasons assigned; and, once discharged, a civil servant has no case in the courts for wrongful dismissal and damages. Promiscuous removals, however, never became the fashion, even when the abuse of patronage was at its height; and the custom which nowadays protects an official’s right to be kept in the service during good behavior is as scrupulously observed as any law on the subject could possibly be. Nothing would sooner discredit a ministry than any manifestation of a disposition to tamper with the securities and immunities of the permanent service.

A difficult but inescapable problem in any civil service system is that of pay. What shall be the relation between the rate of pay for civil servants and for persons engaged in comparable work in private employ? How shall a scale be arrived at which will be fair as between class and class within the service, and fair also to the taxpayers who must carry the burden? There was a time when the bulk of the state's work was done by persons who secured their positions through patronage, who were frequently incompetent and negligent, and who—however they actually fared in particular cases—could hardly be regarded as having a claim to compensation on a basis fixed by market demand. Nowadays, however, the state seeks out the best talent available, competing for it with the professions and with private employers, and must expect to pay in reasonable accordance with the value of the work done or services rendered.

Mere acceptance of this situation does not solve the problem. On the one hand, civil servants are virtually assured of permanent employment; they have ample opportunities for promotion; they have a dignified connection and are shielded from certain of the casualties of private employment. On the other hand, they are subject to special rules of decorum; they are denied some of the privileges enjoyed by other citizens, chiefly in the direction of political activity; they have no chance to acquire riches at an early age, or indeed at all; once in the service, they cannot leave it without sacrifice of their superannuation rights, or, having left it, return to it except under the most unusual circumstances. The principle which controls in the shaping of British policy on the subject is, in brief, that the state—like any other employer—must “pay whatever is necessary to recruit and to retain an efficient staff.”<sup>1</sup> This means that, on the average, the pay must be a little better than in the general run of employments outside the service, and that it must be continuously adjustable to changing economic conditions. Since 1920, indeed, the whole system of pay has been a pre-war base rate, to which is added a bonus rising or falling with the cost of living. In this manner the scale has been kept reasonably close to the range of salary and wage levels prevailing in private industry.<sup>2</sup>

<sup>1</sup> These are the words of a special committee on pay in the civil service, reporting in 1923.

<sup>2</sup> Except in the relatively few instances in which it is fixed by statute, the pay of all civil servants is determined by the department with the approval of the Treasury.

## Pensions

Retirement and retirement allowances, or pensions, are regulated on larger lines by acts of Parliament, but in all details by the Treasury, and the system is administered by Treasury commissioners. The normal retirement age is 60; retirement on pension can take place before that age only upon presentation of a certificate of physical or mental unfitness; at that age anyone may retire who desires to do so; at 65, retirement is compulsory unless the Treasury allows an extension, in the individual case, up to a maximum of five years. Contrary to the practice in France and in the national administration of the United States, employees are not required to make a contribution out of their salaries toward the cost of the system. No pension is payable, however, until after 10 years of service; and all disputed claims are settled by Treasury authorities without appeal to the courts.<sup>1</sup>

Organiza-  
tions of civil  
servants

In these days of widespread and effective organization in industry, business, and politics, one will not be surprised to learn that in Britain as elsewhere civil servants, high and low, have formed themselves into unions and confederations for the promotion of their pecuniary and other interests. Trade unions among employees in private industry were legalized only in 1824-25, and similar organizations of civil servants became permissible only in the early years of the present century. More than half of the whole number of public employees, however, are now to be found in one or another of four major associations, of which three are federations of local or other societies having cognate interests.<sup>2</sup> Furthermore, until 1927 such associations were free to affiliate with trade union organizations outside, as well as inside, the public service; and most of the unions and federations became thus tied up, not only with the general national trade-union association, the Trades Union Congress,<sup>3</sup> but also with the

<sup>1</sup> N. E. Mustoe, *The Law and Organization of the British Civil Service* (London, 1932), Chap. xi. This volume may be commended for the more purely legal aspects of the entire civil service system. On superannuation, cf. H. D. Brown, "Civil Service Retirement in Great Britain," 61st Cong., 2nd Sess., Sen. Doc. No. 290. The standard work on government pensions in general is L. Meriam, *Principles Governing the Retirement of Government Employees* (New York, 1918).

<sup>2</sup> These three are: the Civil Service Confederation, with 65,000 members in 1930; the Union of Postal Workers, with 90,000; and the Joint Consultative Council, with about 10,000. The fourth association is the Professional Civil Servants, also with about 10,000. The total number of staff organizations, independent or federated, was reported in 1931 as 275.

<sup>3</sup> See p. 353 below.

Labor party. For organizations like the Union of Postal Workers, such relationships were altogether natural. Pay and working conditions in the service are governed very largely by the standards prevailing in private employment, and it is to the interest of the government workers to coöperate in any effort of private employees to raise wage levels and improve conditions.

Such alliances, however, raise problems—in particular, that of the right to engage in strikes. The unionizing of government workers has been going on the world over, and the strike question never fails to come up. Various ways of handling it have been adopted. In the United States, an act of Congress dating from 1912 recognizes the right of civil service organizations to affiliate with labor unions outside of the service, so long as such relationship does not entail any purpose or obligation to strike. In Germany, full rights of association and affiliation are recognized in the national constitution,<sup>1</sup> but again stop short of the right to strike—even though some strikes have actually taken place. In Britain, an attempted general strike in 1926 brought the issue dramatically to the fore, and a great deal of argument, pro and con, took place. The Civil Service Clerical Association—the largest constituent association of the Civil Service Confederation—sounded out its membership by a referendum and obtained a majority opinion that, so far as that organization was concerned, its officers had no power to call out the members on strike and its policy of affiliation could not be construed to involve any obligation to support a strike. The Conservative government of Mr. Baldwin came to the view, however, that the affiliation of civil servants' organizations with economic groups which accept the principle of the sympathetic strike and the "solidarity of labor" ought to be definitely banned; and a drastic Trade Disputes and Trade Unions Act of 1927, passed in a state of public temper rare in Great Britain, not only prohibited civil servants from being members of any trade union unless the body is confined to persons employed under the crown and is independent of any outside trade union or federation of trade unions, but forbade any civil servant organization to be associated, directly or indirectly, with any political party. The measure was opposed vig-

Restrictions  
imposed in  
1927

<sup>1</sup> Art. 130. Cf. Art. 159. See H. Finer, *The Theory and Practice of Modern Government*, II, 1411-1417.

rously by the civil service organizations, and by labor interests generally, as constituting an unnecessarily drastic action induced by sheer panic. Nevertheless, it prevailed, and not only were all civil servants who individually belonged to outside unions compelled to give up their membership, but all organic relations of the civil servant organizations with the Trades Union Congress and the Labor party were brought to an end. Early in 1931, the second Labor government sponsored a bill repealing the famous Section V chiefly objected to. Other matters, however, pressed more urgently, and eventually the measure was withdrawn. No doubt there will be further controversy on the subject. But at present it seems not unlikely that the complete segregation of civil-servant from other unionism, and from partisan connections as well, will prove to have been written permanently into the nation's civil service law.<sup>1</sup>

Whitley  
councils in  
the civil serv-  
ice

A grievance of civil servants often voiced in earlier days was that they had no opportunity to participate in making the rules and determining the conditions under which they worked. They could, it is true, present memorials and petitions, which presumably received respectful attention from department heads and from the Treasury. But there was no provision for systematic discussion of and coöperative action upon civil service matters in joint committees or other agencies representing both officials and staff. This situation has now been remedied by the interesting device of "Whitley councils." In the autumn of 1916, when war-time industry was menaced by exceptionally serious unrest among the workers, a Ministry of Reconstruction committee, with J. H. Whitley (afterwards speaker of the House of Commons) as chairman, was set the task of working out ways of improving the relations of employers and employed; and in the following year a report submitted by this agency was adopted by the cabinet and urged upon employers and work-people alike as embodying a promising plan for the reorganization of industry. The essence of the scheme was a system of national, district, and works councils or committees, to include equal numbers of

<sup>1</sup> Organizations of civil servants in the United States are, of course, actively affiliated with the American Federation of Labor, but on the assumption that they will not thereby be drawn into any commitments or activities having to do with strikes. The best account of unionism in the British civil service is L. D. White, *Whitley Councils in the British Civil Service* (Chicago, 1933), Chaps. xii-xiii; also Chap. xiv on the general strike of 1926 and Chap. xv on the legislation of 1927.

representatives of capital and of labor,<sup>1</sup> and to be charged with "discussion about and adjustment of" industrial conditions, subject to the superior authority of the trade unions and employers' associations. No legislation made the formation of such councils mandatory; the government merely recommended the plan and left operators and workers to adopt it as far as they liked.<sup>2</sup>

In the domain of private industry for which it was devised, the scheme fell short of fulfilling the most ardent expectations, but nevertheless so justified itself as apparently to have become a permanent feature of the nation's industrial order. Not only so, but in the civil service, to which there was originally no intention of applying it, it has taken root and has worked considerable improvement. Impelled by the rising cost of living, and stirred by the plans of the Treasury to substitute an eight-hour for a seven-hour day, the civil servants demanded that they, equally with employees in private industry, be admitted to the benefits of the arrangement; and in 1919 the Whitley system was introduced rather generally throughout the service. The machinery as it now stands consists of (1) departmental councils (some 70 in number), varying somewhat in character from department to department, but each containing equal numbers of official and staff representatives,<sup>3</sup> and (2) a national council of 54 members, half appointed by the Chancellor of the Exchequer to form the official side and half by the civil service associations, grouped in certain ways, to form the staff side. Practically all civil servants are nowadays represented in both departmental and national councils; and in most of the departments, as well as more broadly upon national lines, much useful work has been done. It is the business of the councils to consider matters relating to recruitment, hours, promotion, tenure, discipline, and remuneration; to devise ways of better utilizing the training and experience of the staff; to encourage the further education of staff members; and to propose remedial legislation. Many decisions arrived at can be put into effect by simple council agreement, although naturally some, by

<sup>1</sup> By agreement, representatives of the government also.

<sup>2</sup> For the plan, see *Parliamentary Papers*, Cmd. 8606 (1917).

<sup>3</sup> In the case of departments having staffs scattered throughout the country, provision is made for district or local committees.



their nature, require action by the department head, by the Treasury, or even by Parliament. It is often charged that the official side enjoys the greater power—even that, in some cases, it is arbitrary and despotic. It has the unquestionable advantage of knowing that upon any matter upon which agreement cannot be reached its views will prevail; and, as a recent writer has warned, the employee side, speaking generally, must not expect too much. Fifteen years of experience with the system has, however, gone far toward substituting for the relationship of master and servant that of copartnership, and has, accordingly, helped appreciably to bring the service into a more contented frame of mind. The royal commission which most recently studied civil service matters (in 1929-31) had no doubt that the scheme should be continued. Germany has somewhat similar arrangements, but France and the United States do not.<sup>1</sup>

Criticisms of  
the service

Students of that increasingly important subject, comparative administration, concur in giving the British civil service an exceptionally high rating. This does not mean that it is perfect; and if evidence were required that Englishmen themselves do not regard it as such, it could readily be found in the numerous official investigations of the system which, as mentioned above, have been made in the past thirty or forty years.<sup>2</sup> Evidences sometimes appear that the evils of patronage have not been so completely eradicated as is fondly supposed. The nature and content of the examinations give rise to many protests—some on the ground that there is too much dependence on written tests; some on the charge that by overstressing the classics and underrating natural science too much advantage is given the graduates of Oxford and Cambridge as against those of Manchester, Leeds, Birmingham, or Liverpool; some on the score

<sup>1</sup> The principal work on the council system is L. D. White, *Whitley Councils in the British Civil Service* (cited above), especially Chaps. i-xi, xvii-xviii. Cf. J. H. Macrae-Gibson, *The Whitley System in the Civil Service* (London, 1922). A Civil Service Conciliation and Arbitration Board, which dealt with controversies arising out of claims for increased remuneration made by classes of government employees, was abolished in 1921. But in 1925 authority of a similar nature was conferred on a Civil Service Arbitration Court established under the Industrial Courts Act of 1919.

<sup>2</sup> Documents embodying the results of the most recent inquiries are: *Fourth Report of the Royal Commission on Civil Service*, Cmd. 7338 (1914); *Report of the Committee Appointed by the Lords Commissioners of His Majesty's Treasury*, Cmd. 8657 (1917); *Final Report of the Treasury Committee on Reconstruction of the Civil Service*, Cmd. 164 (1919); and *Report of the Royal Commission on the Civil Service, 1929-1931*, Cmd. 3909 (1931).

that, in spite of persistent effort, the Civil Service Commission has not succeeded in adequately correlating its examinations with corresponding stages in the educational system of the country. There are even those who argue that the disadvantages of the examination system more than counterbalance anything that can be said in its favor. There is the inevitable protest against "red-tape"; there is apprehension, too, lest the civil servants, as they become more and more organized and group-conscious, will be increasingly tempted to make use of their power, as unionized employees and as voters, to force unjustifiable legislation concerning pay, hours, pensions, and other matters of interest to them as a class.

Over against these real or fancied deficiencies are to be set many praiseworthy features. Several have been pointed out in preceding paragraphs and do not require to be mentioned again. Three of somewhat more general character may, however, be referred to in closing. The first is the almost uniformly high quality of the men and women attracted to the service. Some are impelled by a sense of civic duty; some are drawn by the prospect of a career in a field in which the way is open for talent and industry, irrespective of family connections; some, no doubt, are appealed to by a profession which promises a steady assured income, without much risk, instead of the worry and competition, the glittering prizes or possible failures, common to the outside world. At all events, it is the universal testimony that the service attracts and holds a splendid body of workers. A second feature, closely related, is the generally excellent morale which the service displays, and, in particular, the interest in and sense of responsibility for its own improvement which it evidences. The Institute of Public Administration,<sup>1</sup> open to all grades of the service, and aimed at maintaining the high ideals and traditions of which civil servants are justly proud, is but one of the many indications of this spirit.

Finally may be mentioned the fact that the service does not constitute, and is not thought of by Englishmen as being—at least in any objectionable meaning of the word—a bureau-

Its strong  
points

Not a bureau-  
cracy in  
the Continental  
sense

<sup>1</sup> This organization, established in 1923 by a group of civil servants, holds conferences, provides lectures, encourages research, and publishes a quarterly, *Public Administration* (formerly the *Journal of Public Administration*), which is the best medium through which to keep abreast of current developments and discussion.

cracy. To be sure, if the term be employed in its literal sense to suggest simply "government by professional administrators," there is full justification for applying it to the British system. Undeniably, permanent, professional administrators play a rôle whose importance it would be difficult to exaggerate. They do not, however, dominate the scene and fix the whole tone and character of government in the fashion experienced in many other countries. In pre-war Germany, the civil servants, while exceptionally efficient, formed, to all intents and purposes, a caste, separated from the rest of the people, acting according to procedures which they themselves created, and obnoxious to liberal elements generally by reason of their arbitrariness, haughtiness, and exclusiveness. Even in republican France, the numerous, highly integrated, and ceremonious administrative servants of the state form somewhat of a class apart and often offend democratic susceptibilities. In this Continental sense of the term, Britain has no bureaucracy. The rank and file of the British civil service are like other men and women: they are recruited from no special classes or cliques; to an increasing degree, they have the same social and political background as other people; they are educated in the same schools and universities. There may be some sacrifice of efficiency. But, as the Englishman sees it, any possible loss at this point is more than offset by the fact that civil servants, of whatever station, are simply "ingredients in a political system in which the calm assurance was long ago planted that the citizen is the master of the Executive."<sup>1</sup>

<sup>1</sup> H. Finer, *The British Civil Service*, 10. But compare the points of view suggested and questions raised in R. Muir, *How Britain Is Governed*, Chap. ii. There is no adequate history of the British civil service, but there is much historical material in D. B. Eaton, *Civil Service in Great Britain* (New York, 1880), already cited. R. Moses, *The Civil Service of Great Britain*, is also largely historical. The best brief description of the present-day system is a Fabian Society publication previously referred to, i.e., H. Finer, *The British Civil Service* (London, 1927), to which may be added the same author's *The Theory and Practice of Modern Government*, II, Chaps. xxvii-xxviii, *passim*. Another Fabian pamphlet of value is W. A. Robson, *From Patronage to Proficiency in the Public Service* (London, 1922). M. B. Lambie, *British Civil Service Personnel Administration*, reprinted from 70th Cong., 2nd Sess., House Doc. 602 (pp. 403-460), is a recent and valuable discussion of all personnel aspects. The reports of royal commissions cited above are, of course, indispensable, and a considerable amount of documentary material will be found in L. D. White, *Civil Service in the Modern State* (Chicago, 1930).

## CHAPTER IX

### THE HOUSE OF COMMONS—CONSTITUENCIES AND VOTERS

On the left bank of the Thames, midway between Chelsea Bridge and the Tower, stands the largest and most impressive Gothic structure in the world, the Palace of Westminster; and within its massive walls sits, appropriately enough, the oldest, largest, most powerful, and most interesting of modern legislatures. Not only is the British Parliament the principal instrumentality of popular government in one of the most democratic of states; it is, in a very real sense, the "mother of parliaments," whose progeny has spread into every civilized section of the globe. Much has been written in the last 15 or 20 years about the decline in prestige, and in actual as opposed to mere legal power, which this parliament, in common with legislatures elsewhere, is alleged to have undergone;<sup>1</sup> and critics suggest all manner of changes in it, ranging from mere amendment of the rules of procedure to drastic reorganizations in structure and powers. Probably there has been some actual falling-off in efficiency since the simpler days of Gladstone and Disraeli, and unquestionably there has been loss of effective power and of prestige. No careful observer, however, would for a moment be deluded into thinking of the chambers that sit at Westminster as mere outworn relics of the past, or as in any absolute sense in decay or eclipse. No legislature will better repay the attention devoted to it by the student of government, and this by reason of what it now is quite as much as on account of what it has been.

How Parliament originated and developed into its present form has been explained in an earlier chapter. We are now to concern ourselves with the institution as it stands today—first of all, with the structure of the two houses, including the important matter of parliamentary suffrage and elections; afterwards, with organization and procedure, especially in the more active and weighty House of Commons; and, finally, with the

The "mother  
of parlia-  
ments"

The House of  
Commons to  
be studied  
first

<sup>1</sup> See Chap. XV below.

interrelations and play of forces, whether entirely within Parliament or partly outside, that in the main make the working governmental system what it is—together with some of the larger questions about parliamentary government to which Englishmen, looking out upon the next 50 or 75 years, are giving earnest thought. We begin with the House of Commons, not only because of the primacy which that body enjoys, but because the position, functions, and problems of the House of Lords can hardly be understood until the nature of the popular chamber has been brought clearly into view.

Parliamen-  
tary consti-  
tuencies

The outstanding fact about the House of Commons, considered structurally, is that all of its 615 members are elected, and all but 12 are chosen by voters grouped in constituencies arranged on a geographical basis. Such geographical grouping is taken for granted nowadays. But it is interesting to observe that in earlier times it was merely incidental to the main idea in representation, namely, that it was classes or interests—landholders, merchants, guildsmen, etc.—that were entitled to have spokesmen in the House of Commons, not simple aggregations of people who happened to live in particular areas. To be sure, the classes named were represented according to county and borough units. But this was merely a matter of convenience. Representation was primarily functional, or occupational, and only incidentally geographical. So it continued until hardly more than a hundred years ago. Then, however, came—in the course of the nineteenth century—a decided change. By stages to be enumerated presently, parliamentary suffrage was extended to the general mass of the people, putting an entirely different face on the situation. The electorate became numerous and heterogeneous; the functional groups were engulfed; the unit of representation became simply a numerical aggregate—the enfranchised people dwelling in a region marked off on the map; the whole theory shifted from a functional to a geographical basis, from which, as we shall see, some people would like to reclaim it today in the interest of a revived functionalism. The House of Lords continued to be—as it still is—an essentially functional chamber. But the popular, elective branch emerged as a body in which the functional principle finds legal recognition only in the election of a dozen

"university members" by holders of degrees from certain institutions of higher learning. More than 600 commoners sit for fixed geographical areas, just as do American congressmen.<sup>1</sup>

These constituencies, or districts,<sup>2</sup> are in all cases counties, boroughs, or subdivisions thereof. Long before Parliament arose, counties and boroughs were the accepted units for judicial, fiscal, and administrative purposes, and it was natural enough that they should become the areas for parliamentary representation. Until late in the nineteenth century, they were employed for the purpose practically without subdivision, each county and borough, as a whole, returning a stipulated quota of members—which in the great majority of cases (in England proper, at all events), and regardless of size or population, was two. Attempts to apportion representation to population in a more exact manner have led within the past 50 or 60 years to the cutting up of almost all counties and of a considerable number of boroughs into smaller electoral areas, laid out with a good deal of regard for historical boundaries, administrative divisions, and physical features, yet necessarily more or less arbitrary and artificial, and comprising groups of people combined, as a rule, for electoral purposes only. Just as congressional districts in the United States never cut across state boundaries, so British parliamentary districts are commonly contained wholly within a single county or borough.<sup>3</sup> Whereas, however, our congressional districts in any given state are known merely by number, every British constituency has a distinct name, *e.g.*, the borough of Bradford, the Central Division of Portsmouth, or the East Grinstead Division of Sussex.<sup>4</sup>

<sup>1</sup> Representation in Continental European countries underwent the same change, although Fascist Italy has of late been experimenting with a functional plan. See Chap. XXXVII below.

<sup>2</sup> Speaking strictly, a "constituency" is a body of people represented, while a "district" is a territorial unit. The former term is commonly employed in Britain, the latter in America. For practical purposes the two may be used interchangeably.

<sup>3</sup> Exceptions arise when, for example, a municipal borough takes in new territory or otherwise alters its boundaries, because such changes have no effect upon the boundaries of "parliamentary" boroughs.

<sup>4</sup> It should be noted that the counties that figure in connection with parliamentary elections are the old historic counties, not the new administrative counties created in 1888. See pp. 388-389 below. A map of parliamentary county divisions will be found in G. Philip, *Handy Administrative Atlas of England and Wales* (London, 1928), Plate 5. Plate 6 in the same book shows the location of parliamentary boroughs. There are similar volumes for Scotland and Ireland in the Philip series.

The single-member plan

A main reason for this partitioning was the triumph of the principle of single-member districts. When the first reform act was passed, in 1832, Welsh counties and boroughs were returning one member each, and Scottish boroughs were arranged in groups which, with few exceptions, also returned one member apiece. But, aside from five boroughs with one member each, and the county of Yorkshire and the "city" of London<sup>1</sup> with four each, all counties and boroughs of England proper had two. The act mentioned increased the number of single-member constituencies in England by taking away one seat from each of 31 less populous boroughs; and although the Reform Act of 1867 moved somewhat in the opposite direction by giving 13 constituencies three members each, the Redistribution Act of 1885 definitely adopted the single-member plan, breaking all of the counties, and all of the multiple-member boroughs except 23, into areas returning one member only. Today the only remaining multiple-member districts are 12 boroughs and the City of London, all with two members each.<sup>2</sup> Many present-day proposals for electoral reform look to a nation-wide revival of multiple-member constituencies; any of the widely discussed plans of proportional representation would, of course, require such a change.<sup>3</sup> But the single-member system is still in general use.

University representation

The principal irregular feature in the present make-up of the House is the separate representation of the degree-holders of certain universities. This practice dates from 1603, when, in answer to prolonged demand, Oxford and Cambridge were given the privilege of returning two members each, on the theory that they were affected by so many parliamentary enactments that they deserved to have special means of making themselves heard. Dublin was at the same time given a representative in the Irish House of Commons, this representative being transferred to Westminster when the Act of Union went into operation (1801), and another being added in 1832. The Reform Act of 1867 gave one seat to the University of London, one to Glasgow and Aberdeen combined, and one similarly to Edinburgh and St. Andrews. Finally, in 1918, a total of 15 seats

<sup>1</sup> See p. 401 below.

<sup>2</sup> Four of the seven university constituencies, however, also return more than one member. See p. 169, note 2, below. There are, in all, 595 constituencies, of which 577 return one member apiece.

<sup>3</sup> See pp. 205-209 below.

were distributed among university constituencies—although the setting up of the Irish Free State in 1922 led to the abolition of three,<sup>1</sup> leaving the number at the present figure, *i.e.*, 12.<sup>2</sup> There is nowadays no good reason—if indeed there ever was one—why degree-holders of universities should be singled out for special treatment. But the representatives whom they elect are usually of more than average capacity, and intermittent efforts to put an end to the anomaly have failed.

The Parliament that sits at Westminster is, of course, more than merely an English parliament in the narrower sense of the term; it is the Parliament of Great Britain and Northern Ireland. It became, indeed, the Parliament of the United Kingdom through the bringing in of representatives of the Welsh counties in the reign of Henry VIII, the abandonment of a separate Scottish parliament in favor of representation of the north country at Westminster in 1707, and a similar step taken for Ireland at the end of the eighteenth century. While still upon that basis, its membership, which had stood at 670 since 1885, was raised in 1918 to 707. Upon the establishment of the Irish Free State in 1922, however, all Irish representation ceased except in the case of the half-dozen northern counties which retained close affiliation with Great Britain; and this change—reducing the Irish quota at a stroke from 105 to 13—brought the total number of members down to the present level, *i.e.*, 615, of whom 492 sit for English constituencies, 36 for Welsh,<sup>3</sup> 74 for Scottish, and 13, as has been said, for Irish.<sup>4</sup> Even so, the body is still one of the two or three most numerous popular chambers in the world. Until the dropping out of the 92 Irish members, most of whom represented rural districts, county representatives preponderated; since that time there has been an almost exact balance between county and borough members, *i.e.*, 300 of the one and 303 of the other. The ancient legal distinction between “knights of the shire” and “burgesses

Number and  
distribution  
of members

<sup>1</sup> Dublin's two and the National University's one.

<sup>2</sup> The list is as follows: Oxford, 2; Cambridge, 2; London, 1; combined English provincial universities, 2; Wales, 1; combined Scottish universities, 3; Queen's (Belfast), 1.

<sup>3</sup> Including those of Monmouthshire.

<sup>4</sup> In pursuance of this reconstruction, the official name, “Parliament of the United Kingdom of Great Britain and Ireland” became, by act of April 12, 1927, “Parliament of Great Britain and Northern Ireland.” The corresponding rephrasing of the “style and title” of the sovereign is mentioned above (see p. 70).



of the borough" was, however, abolished by the Ballot Act of 1872, and so-called "rural" and "urban" constituencies are in so many cases practically indistinguishable in populational conditions and other respects that the classification is of slight significance. Officially, all representatives are now known simply as "members of the House of Commons." All except the university members are chosen at the same time, in the same way, and by the same suffrage. All have the same rights, privileges, and powers, except that the Scottish members always have places on the standing committee of the House to which measures specially affecting their portion of the realm are referred.<sup>1</sup>

No periodic  
reapportion-  
ments

In the United States, congressional districts are laid out by, and can be altered only by, the state legislatures; and until 1931 national law required them to be as nearly equal in population as possible. In Great Britain, parliamentary districts can be created or modified only by act of Parliament. In the former country, the constitution requires a reapportionment among the states (followed by the necessary intra-state readjustments) after every decennial census; in France, there is a redistribution at least every five years; most countries, indeed,—including the British dominions—have definite rules on the subject.<sup>2</sup> The object, of course, is to keep electoral units (in terms of the number of voters) substantially equal, so that a vote will count for as much in one place as in another; and such equality (at least a reasonable approximation of it) seems to most people a rather indispensable condition of true democracy. Curiously, there has never been a law on the subject in Great Britain, nor does custom impose any definite requirements; and though decennial censuses have been taken regularly since 1801, redistributions have occurred only at very irregular intervals, as hardly more than incidents of widely separated suffrage exten-

<sup>1</sup> See p. 248 below. The present membership of the House classifies as follows:

	COUNTY MEMBERS	BOROUGH MEMBERS	UNIVERSITY MEMBERS	TOTAL
England	230	255 *	7	492
Wales and Monmouthshire	24	11	1	36
Scotland	38	33	3	74
North Ireland	8	4	1	13
Total	300	303	12	615

\* Including 2 for the City of London, which is not technically a borough.

<sup>2</sup> The German Republic has a unique automatic system, for which see p. 391 below.

sions and other electoral reforms. The only reapportionments in three hundred years that aimed at anything approaching uniform constituencies were those of 1885 and 1918, mentioned below, and they were made only after conditions had become shockingly bad, and with no anticipatory provision to prevent an equally unsatisfactory situation from arising again with the lapse of time. Infrequent redistributions reduce the opportunity for what is known in America as gerrymandering. But experience shows that the English habit of fair play can usually be depended upon to hold this abuse in check, and the long periods between reapportionments leave the constituencies much of the time decidedly unequal and, besides, tend to raise every apportionment, of even the simplest sort, to the level of a constitutional issue freshly to be threshed out, with much effort and delay, by the politicians and voters. Under the redistribution of 1918, districts contained approximately 70,000 people apiece, but after a decade and a half uniformity has, of course, again disappeared.<sup>1</sup>

Members of the House of Commons are chosen throughout the country by an electorate that falls but little short of including all adult men and women. Persons not familiar with electoral history would be surprised, however, to learn how recently this first became true. To be sure, in mediaeval times, the knights of the shire were chosen by the general run of freeholders and the representatives of the boroughs by all the burgesses or townsmen. But this was far from constituting universal suffrage in any modern sense of the term; besides, as will be pointed out forthwith, these earlier electorates were in time whittled down to very narrow proportions, which lasted until well into the nineteenth century. As late as 1918, more than 2,000,000 men were without votes; until the year mentioned, no woman could vote, and until a decade nearer our own day, only women over 30 years of age.<sup>2</sup> Notwithstanding the coun-

Develop-  
ment of the  
electoral  
system

<sup>1</sup> By contrast, it may be noted that as a result of the reapportionment of 1931, the number of people for whom each member of the American House of Representatives sits rose to 282,974.

<sup>2</sup> The parliamentary electorate alone is here referred to. Qualifications for voting in local elections have always been, and still are, different in Britain from those required in parliamentary elections. See p. 391 below; and compare arrangements in present-day France, where a single electorate functions for all purposes.

try's reputation for popular government, there were until lately a number of states—among them France, Switzerland, and a good many of the American commonwealths—with considerably more democratic electoral systems.

Undemo-  
cratic condi-  
tions, before  
1832

The long and intensely human story of the parliamentary suffrage in England has never been fully told; and it certainly cannot be told here. A few of the high points may, however, be noted with a view to putting the present arrangements in perspective. To begin with, the suffrage was, as has been noted, in the earlier days of Parliament relatively broad, but was subsequently narrowed. In the counties, a law of 1430 restricted it to male inhabitants possessing land of a yearly rental value of 40 shillings; and as late as the opening of the nineteenth century, the number of such "40-shilling freeholders," all told, in both England and Wales, hardly exceeded a quarter of a million. In the boroughs, the theory persisted that all freemen were entitled to vote. But, with the connivance of monarchs who found it easier to control towns with few than with many electors, the lists of freemen were in most cases cut down until only certain classes of property-holders or taxpayers, or members of some favored guild, remained. Developments varied widely in different localities, and about the only generalizations that one can make are that, with scant exceptions, borough voters were by the beginning of the nineteenth century few in number and in the main restricted, as in the counties, to persons standing in some legally defined relation to property. Furthermore, while in most of the counties and in many larger boroughs there were bona-fide elections (even though often attended by shocking irregularities), scores of lesser borough constituencies had by the date mentioned fallen under the control of wealthy and ambitious men who bestowed the seats as they saw fit upon members of their families or upon friends, and even put them up for sale precisely as, and no less publicly than, they might put up a country-house or shares in a joint-stock company. Many of these "patrons" were members of the House of Lords, who sometimes controlled from six to a dozen seats in the lower chamber; some were themselves members of the House of Commons; others were people outside of Parliament; and in plenty of instances ministers and other public officials did not hesitate to take a hand in the game. Altogether, it is

estimated that less than half of the borough members in 1832 were elected freely by their constituents. The remainder sat for "rotten" or "pocket" boroughs of one description or another. In addition was the fact that, whereas the social and economic transformations wrought by the Industrial Revolution had caused a great shift of population to the northern parts of the country, there had been no corresponding reapportionment of representation, with the result that large new towns like Birmingham and Manchester had no representation at all (except through the counties in which they were situated), while dozens of insignificant southern boroughs with as few as 20 or 30 people apiece—some, indeed, with no actual residents whatever—went on returning their two members as of old.

Gladstone on one occasion eulogized "nomination" boroughs as a means of bringing young men of promise into the House; and it cannot be denied that in this way youths of ability secured seats who might not have been successful in a popular election. The younger Pitt started his parliamentary career in this fashion. So did Charles James Fox. So, for that matter, did many of the men who made history in the rôle of reformers in the early nineteenth century. Something might also be said, however, of the uncounted dunderheads, or worse, who went in by the same gateway.

At all events, it is obvious enough that the Britain of the early nineteenth century was a decidedly aristocratic country, no less in its government than in its social structure and habits. One branch of Parliament consisted entirely of ecclesiastics and hereditary lay members; the other contained only a few persons chosen by any considerable number of electors; administrators and judges owed their positions to men who acknowledged little or no responsibility to the people, and were themselves invariably of the "governing class"; local government in the counties, and very frequently in the boroughs, was in the hands of petty oligarchies; the actual governing powers were the crown, the church, and the aristocracy.<sup>1</sup>

Aristocratic  
character of  
the gov-  
ernment

<sup>1</sup> The monumental treatise on the House of Commons before 1832, covering every significant aspect of the subject, is E. Porritt, *The Unreformed House of Commons; Parliamentary Representation before 1832*, 2 vols. (2nd ed., Cambridge, 1909). Another extensive and excellent work, dealing with the subject less comprehensively but presenting a vast amount of illuminating material, especially on the actual methods and results of parliamentary elections in counties and boroughs, is

Some people—many indeed—were satisfied with things as they were. Blackstone in 1765 wrote complacently of the beneficent system of law-making by “gentlemen of the kingdom delegated by their country to Parliament”; Burke in 1790 proclaimed the system “perfectly adequate to all the purposes for which a representation of the people can be desired or devised.” Already, however, John Locke, far back in 1690, had denounced the absurdities of the existing allocation of electoral power. And in 1783, the younger Pitt, speaking on the floor of the Commons, admitted bluntly that “this house is not the representative of the people of Great Britain; it is the representative of nominal boroughs, of ruined and exterminated towns, of noble families, of wealthy individuals, of foreign potentates.”

Movement  
for parlia-  
mentary  
reform

By the time when Pitt delivered himself of this criticism, there were many to applaud his words. Voluntary reform societies put forward programs embracing manhood suffrage and equal electoral districts, and but for the French Revolution and the ensuing wars, something might have been accomplished before the century ended. The restoration of international peace in 1815 left the Tory party entrenched in office, and for a decade and a half the government—backed up by every vested interest that stood to lose by any shift of power to the people—kept things pretty much as they had been. The forces of reform, however, had a good case; and the growing need of pioneering legislation to meet the social and economic difficulties flowing from the war and from the new industrial situation—legislation such as could be hoped for only from a popularized and liberalized Parliament—ultimately brought action. The walls of opposition began to crumble in 1830, when the Tories fell from power and the Whig ministry of Earl Grey came in. Many of the Whigs were aristocratic enough; but the party as a whole was prepared to endorse, and the new ministry to push, a reform conceived on moderate lines. Even now there were not immediate results. A reform bill passed by the House of Commons in 1831 was thrown out by the upper chamber; and it was only

L. B. Namier, *The Structure of Politics at the Accession of George III*, 2 vols. (London, 1929), and *England in the Age of the American Revolution* (London, 1930). A good briefer account of electoral conditions before the Reform Act of 1832 is C. Seymour and D. F. Frary, *How the World Votes* (Springfield, Mass., 1918), I, Chap. iv.

after a parliamentary election, a second passage of the bill by the Commons, and agreement by William IV to create enough new peers to swamp the opposition that the Lords gave way, in 1832, and permitted the Great Reform Bill to be placed on the statute book.<sup>1</sup>

This measure is commonly thought of as one of the most important in British legislative history, and rightly, since it gave the country's political system a slant or bent which has led straight to the democracy of the present day.<sup>2</sup> This it did, not merely by increasing the number of voters at the moment, but by basing the parliamentary suffrage for the first time, in counties and boroughs alike, upon a single form of qualification, *i.e.*, the rental value of property owned or used. Involving, as this did, the fixing of qualifications in terms of arbitrarily selected sums, it foreordained that every fresh agitation on the subject should thereafter have as its objective a lowering of the prevailing figures, until, the vanishing point having been reached, full democracy should finally have been arrived at. The act of 1832 was drawn on such lines that it gave the suffrage to hardly half a million people who had not possessed it before.<sup>3</sup> It did not confer, and was not intended to confer, political power on the masses, urban or rural. Indeed, voters in some boroughs actually found themselves disfranchised. A good beginning, however, was made; and along with the doubling of the electorate, the worst defects of the existing lay-out of constituencies were remedied by a redistribution of almost 150 seats, leaving no populous area entirely unrepresented.

Reform Act  
of 1832

<sup>1</sup> The reform movement up to 1832 is sketched in J. Redlich and F. W. Hirst, *op. cit.*, I, Bk. II, Chap. I, and J. H. Rose, *The Rise and Growth of Democracy in Great Britain* (London, 1897), Chap. I. Fuller accounts will be found in G. S. Veitch, *The Genesis of Parliamentary Reform* (London, 1913), and J. R. M. Butler, *The Passing of the Great Reform Bill* (New York, 1914).

<sup>2</sup> Accuracy requires it to be pointed out that the act first passed applied only to England and Wales. Supplementary acts, on similar lines, were passed in the same year for Scotland and Ireland. The description given should be understood as applying to the series, rather than to a single statute, and the same is true with respect to the later reform acts commented on in the pages that follow.

<sup>3</sup> In the counties, the 40-shilling freehold was allowed to stand; but the voting privilege was extended to all leaseholders and copyholders of land rated as of a rental value of as much as £10 a year, and to tenants-at-will holding an estate rated at £50 a year. In the boroughs, all of the old complicated franchises, or qualifications, except that of "freemen," were abolished and a simple uniform franchise was substituted, defined as the "occupation," by a ratepayer, of a house worth £10 a year.

It was this measure, too, that first required qualified persons to be registered in order to vote.

Reform Act  
of 1867

Those who were responsible for the act of 1832 considered that it went quite far enough, but other people felt differently and in the next few years the discussion passed into a new stage in which a group of radical and militant reformers known as 'Chartists' carried on a spectacular campaign for their "six points," *i.e.*, universal manhood suffrage, equal electoral districts, voting by secret ballot, annual parliamentary elections, abolition of the property qualification for members of the House of Commons, and payment of salaries to members out of the public treasury. Chartism as a movement did not survive to see its program realized, but by keeping its various issues before the nation for twenty years it contributed not only to the abolition of property qualifications for members in 1858 but to the enactment of a second major reform bill, in 1867, enfranchising the bulk of the urban working class and enlarging the electorate, in all, by almost a million.<sup>1</sup> This measure also took away seats from over-represented boroughs and bestowed them where ever-changing densities of population most demanded.

Representa-  
tion of the  
People Act of  
1884

The principal groups of people still outside the pale were the agricultural laborers and the miners, both belonging mainly to county constituencies, and it was inevitable that sooner or later they should be made the subject of similar legislation. The ice had been broken; the old electoral system was gone in any event; and it was an occasion for no surprise when, in 1884, Gladstone redeemed a campaign pledge by introducing a bill extending to the counties the same electoral regulations that had been given the boroughs seventeen years before. After once rejecting the measure as it came up from the Commons, the House of Lords assented to it on the understanding that it would be followed by a bill making a further redistribution of seats; and this second bill duly became law in 1885. The first measure, extending the existing borough franchises to the coun-

Redistribu-  
tion of Seats  
Act of 1885

<sup>1</sup> In county constituencies, there was relatively little change; the 40-shilling franchise was maintained, although copyholders and leaseholders might now vote with half of the former qualification, and a new £12 franchise made conditions easier for the tenants-at-will. In the boroughs, however, there were drastic readjustments, not only striking off the £10 requirement for householders, but admitting all "lodgers" who occupied, for as much as a year, rooms of an annual rental value, unfurnished, of £10 or over.

ties, multiplied the county electors by almost three and thereby added to the lists, in the United Kingdom as a whole, twice as many new voters as were created by the act of 1867. The second—marking the first attempt in all English history to apportion representation, the country over, in accordance with a fixed standard, and not by the hit-and-miss method of simply taking seats from a flagrantly over-represented county or borough here and there and by log-rolling methods bestowing them on more deserving ones elsewhere—brought into general use the single-member district plan which, as we have seen, still prevails.<sup>1</sup>

The electoral system as it was left by the acts of 1884 and 1885 stood practically unchanged until 1918. During all of these years almost any Englishman, if challenged on the subject, would have argued that his government was democratic, and certainly it was so regarded by the world generally. There were, however, some rather serious limitations, arising not only from the aristocratic character of the House of Lords, but from various deficiencies of the House of Commons; and much discussion of further reforms was heard, especially after 1900.

In the first place, the suffrage was still defined entirely in terms of relation to property. A man voted, not as a person or citizen, but as an owner, occupier, or user of houses, lands, or business premises. The voter did not have to *own* his property; and the occupational requirements were comparatively easy to meet. Nevertheless there were many men who were not "occupiers," nor yet "lodgers" or anything else that came within the limits of the law. Besides, the law itself was so complicated that nobody but lawyers professed to understand it. The first demand of electoral reformers was, accordingly, for a simplification of the existing system, coupled with provision for full manhood suffrage.

Then there was the matter of plural voting. Under nearly all electoral systems elsewhere, a person, if entitled to vote at all, had only one vote; no other arrangement seemed consistent

Electoral  
questions,  
1885-1918:

1. Manhood  
suffrage

2. Plural  
voting

<sup>1</sup> The parliamentary reforms of the period 1832-85 are dealt with briefly in J. H. Rose, *Rise and Growth of Democracy*, Chaps. ii, x-xiii. The act of 1832 is treated fully in the book by Butler mentioned above (p. 175), and that of 1867 in J. H. Park, *The English Reform Bill of 1867* (New York, 1920); and the best treatise on the entire subject is C. Seymour, *Electoral Reform in England and Wales, 1832-1885* (New Haven, 1915).



with the idea of democratic government.<sup>1</sup> In a country, however, in which the suffrage was tied up as closely with property as it was in Britain, there was some reason why an elector should, under certain safeguards, be permitted to vote in any and every constituency in which he could show qualification. This, indeed, had long been the British practice. A man might vote only once, at a given election, in any one division of a borough. But if he slept in Kensington, had an office in the City of London, and maintained a country place in Surrey, he was entitled to vote in all three places. He might own freehold in twenty counties and claim to vote in all of them. Until 1918, a general election was spread over a period of approximately two weeks, giving the plural voter ample opportunity, even before the day of the motor-car, to get from one constituency to another and thus to vote anywhere from two or three to a dozen or more times. And since there were more than half a million plural voters in the kingdom, one will not be surprised to learn that electoral results were often affected appreciably— or that, since the benefits of the system accrued almost entirely to the land-holding Conservatives, the Liberal party early made “one man, one vote” a slogan and set out to accomplish the total suppression of the practice.

### 3. Woman suffrage

Another suffrage question came to the fore soon after the opening of the present century, namely, the enfranchisement of women. As early as 1847, the writer of a widely circulated pamphlet argued that as long as both sexes were not “given a just representation” good government was impossible; and though John Stuart Mill failed in 1867 to get a clause into the reform act of that year making women taxpayers parliamentary electors, an amendment to the Municipal Corporations Act in 1869 gave them the ballot in municipal elections. A national society to promote the cause was founded in 1867; many private members’ bills conferring the parliamentary franchise made their appearance in succeeding decades; and in 1903 a newly organized Woman’s Social and Political Union launched a spectacular campaign aimed at forcing the introduction of a bill sponsored by the government, such as alone would stand any real chance of becoming law. From having looked only to

<sup>1</sup> The most notable exception was Belgium, where, until 1921, qualified persons were entitled to as many as three votes.

obtaining the parliamentary ballot for women under the property qualifications then applying to men, the movement advanced, furthermore, by 1909 to the point of envisaging the enfranchisement of substantially the entire adult female population.

Still other questions stirred discussion. There was opposition—chiefly from the Liberals—to continuing the separate representation of the universities. The system of registering voters was cumbersome and needed overhauling. More important, the apportionment of seats had again got badly out of keeping with the distribution of population—so much so that there were constituencies which contained twelve or fifteen times as many people as others. If the Liberals were bent upon ending plural voting, the Conservatives were no less determined upon redistribution—in both cases for the good and sufficient reason that existing arrangements worked to the advantage of the other party.<sup>1</sup> Having shorn the second chamber of its veto power (in the historic Parliament Act of 1911<sup>2</sup>), the Asquith government in 1912 brought forward an electoral reform bill providing for complete manhood suffrage, abolishing plural voting, simplifying the registration system, and putting an end to university representation. Controversy over woman suffrage amendments, however—coupled with the growing seriousness of the Irish situation—led to abandonment of the project; and a less ambitious measure suppressing plural voting at general elections (though not by-elections) was kept from reaching the statute book in 1914 by the outbreak of the World War.<sup>3</sup>

4. Other questions—redistribution of seats

As events proved, the war only paved the way for a more comprehensive, and decidedly less partisan, reconstruction of the electoral system than anybody could have anticipated in earlier days; and, no less unexpectedly, the reform was accomplished while the struggle was actually going on. It was, of course, not by choice that the government turned its attention

Representation of the People Act of 1918

<sup>1</sup> The Conservatives' objection to the existing apportionment arose primarily from the fact that Ireland, although only about half as populous as in the earlier nineteenth century, still kept the full quota of seats allotted to her at the union of 1801, i.e., a minimum of 100. The great bulk of the Irish members belonged to the Nationalist party, which was allied with the Liberals.

<sup>2</sup> See pp. 219–222 below.

<sup>3</sup> For fuller treatment of the matters dealt with in preceding paragraphs, see H. L. Morris, *Parliamentary Franchise Reform in Ireland from 1885 to 1918* (New York, 1921).

to electoral questions while the nation was still fighting for its life within hearing of the Channel ports. Rather, it was compelled to do so by the sheer breakdown of the electoral system, caused by wholesale enlistments in the army and by the further dislocation of population arising from the development of war industries. The situation was bad enough in county, municipal, and district elections. But a parliamentary election under the abnormal conditions existing would have been a farce. By successive special acts, and with general consent, the life of the parliament chosen in December, 1910, was prolonged, in order to defer, and perhaps to avoid altogether, a war-time election. A general election, however, there must eventually be; and whether before or after the cessation of hostilities, it admittedly would demand, in all justice, a radically altered system of registration and voting, if not new franchises and other important changes. At the instigation of the cabinet, Parliament therefore took up the matter in the summer of 1916, the first step being to set up a special conference, or commission, to study the subject and suggest the outlines of a bill. The 36 members of this exceptionally capable group were selected by the speaker of the House of Commons, with a view to fair representation not only of the different political parties but of all important schools of thought on electoral matters, *e.g.*, the believers in proportional representation, the friends of the alternative vote, the advocates and opponents of woman suffrage; and the speaker himself took time from his other duties to serve as chairman. A carefully prepared report was submitted after five months,<sup>1</sup> and early in 1918 a new Representation of the People Act became law.

A comprehensive measure

The provisions of this great piece of legislation that attracted most attention were those that swept away all surviving restrictions upon manhood suffrage and conferred the ballot upon some 8,500,000 women, thereby raising a total electorate of some 8,500,000 to one of slightly more than 21,000,000. Upon the basis of this vastly augmented electorate, however, the act went on to erect an electoral system, by no means entirely new, to be sure, yet showing novel features at almost every turn; and the measure will be entirely misunderstood if thought of as only a suffrage law like the act of 1884, or even

<sup>1</sup> Cmd. 8463 (1917).

as a suffrage-reapportionment statute like the acts of 1832 and 1867. Redistribution of seats, plural voting, registration of electors, absent voting, proxy voting, campaign expenditures—all were dealt with in detail; so that, except as will be indicated below, practically the whole electoral law as it stands today is to be found within the four corners of this remarkable war-time statute.<sup>1</sup>

Effort to adapt electoral machinery to the conditions created by the war early convinced the Speaker's Conference that the old practice of defining franchises solely in terms of relationship to property ought to be given up, and that in lieu of it the principle should be adopted that the suffrage is a personal privilege, to be enjoyed by the individual simply as a citizen, and with no longer any distinction between residents of counties and of boroughs. The two houses accepted this view, even though for the time being men and women did not obtain the ballot on identical terms.<sup>2</sup> The qualifications required of male electors at last became relatively simple. Any man who is a British subject, 21 years of age or over, and not suffering from any legal incapacity, is entitled to have his name on the voters' list in the constituency in which he resides, provided he has been a resident of that constituency for a period of three months ending in the June before the annual preparation of the register, or even if he has lived for part of the qualifying period in some other constituency in the same or a contiguous county or borough. Furthermore, he is entitled to be on the voters' list in one other constituency (but only one) anywhere in the country on the basis of occupying, for business purposes, land or premises of a yearly rental value of not less than £10. Neither tax-paying nor educational qualifications—both well known in the United States—have any place in the system. There are, of course, disqualifications. Peers cannot vote in parliamentary elections, on the theory that as members of the upper house they are already endowed with an appropriate amount of political power.<sup>3</sup>

The suffrage  
for men

<sup>1</sup> It was, of course, this act that rearranged the constituencies on the basis described above, except as Irish representation was altered by the creation of the Free State in 1922. See pp. 413-416.

<sup>2</sup> Qualifications for voting in local, *i.e.*, county and borough, elections were, of course, not affected, and are still tied up with the ownership or occupancy of property. See p. 391 below.

<sup>3</sup> Irish peers sitting in the House of Commons are excepted. See p. 213 below.

Lunatics and idiots are naturally debarred, and likewise persons convicted of treason or felony as long as the sentence has not been served or pardon granted. Soldiers and sailors in active service are, however, not excluded, as in some countries; and persons receiving aid out of the public funds for poor relief, while disqualified up to 1918, are no longer so.

The problem  
of woman  
suffrage

The outbreak of the war in 1914 seemed to end all hope for early legislation on woman suffrage. The ultimate effect was, however, quite the opposite. Within two and a half years the conflict brought the suffragists an advantage which no amount of agitation had ever won for them, *i.e.*, the active backing of the government; and a few months more carried their cause to a victorious conclusion which might not have been reached in a full decade of peace. Now that men were to have the suffrage *as persons*, rather than simply as owners or occupiers of property, it was more than ever difficult to withhold it from women. Indeed, in the present juncture - in the face of woman's superb services to the nation during the war—to withhold it was quite impossible. Powerful opposition, of course, was raised. All of the old anti-suffrage arguments were heard again, and in addition it was contended, with a certain amount of plausibility, that a woman's enfranchisement act ought not to be put on the statute book without a referendum, or by a parliament which had overrun its time by two full years, or while three million men, including more than one-fifth of the members of the House of Commons, were absent in military service. There was the awkward situation, too, that the war had so depleted the man-power of the nation that if women were given the suffrage on the same terms as men there would be a heavy preponderance of female voters, even after the soldiers should have returned from overseas. And when it was proposed that the masculinity of the electorate be safeguarded by giving qualified women the ballot only at the age of 30, it was objected, on the one side, that this was an arbitrary, illogical, and unfair disposition of the matter (especially as more than three-fourths of the women employed in the munition plants were under that age); and, on the other, that even if it were done, the disparity, as a matter of practical policy, could not long be maintained.

How solved

There was, at the time, however, no feasible alternative, and accordingly the act as passed conferred the parliamentary suf-

frage on every female British subject 30 years of age, or over, who was herself, or whose husband was, entitled to be registered as a local government elector by virtue of the occupation of a dwelling-house, without regard to value, or of land or other premises of the yearly rental value of £5. This sounds more complicated than it really is. The cardinal points are that the suffrage for women of requisite age, unlike that for men, was to be determined in relation to local, *i.e.*, county or borough, government status; that a woman who was entitled to vote in local elections by reason of either of the specified property relationships might vote, if duly registered, for a member of Parliament; and that, even though she was not a local government elector, she could still vote in a parliamentary election if her husband was a local elector on either specified basis. The disqualifications laid down for men were to hold good also for women in so far as applicable, except that peeresses in their own right<sup>1</sup> were not to be debarred.

This legislation marked a long step in the direction of equal suffrage for men and women, but nevertheless deliberately stopped short of establishing it. Unlike men, women could not qualify independently, as simple residents (indeed there was no residential qualification for women at all); and there was a differential of nine years in favor of men in the age requirement. Everybody understood that this discrimination in the matter of age was designed primarily to meet an abnormal situation created by the war, and from the first it was fair to assume that after the male population should have regained something like its customary numerical proportion the law would be changed. Hardly was the act on the statute book, however, before those who had been responsible for the triumph set about bringing their work to its logical conclusion, and after a decade of persistent agitation a measure meeting substantially all demands—the Representation of the People (Equal Franchise) Act of 1928—became law. Notwithstanding much heated opposition to the so-called “vote for flappers,” the voting age for women was reduced to 21, and all other provisions of the 1918 law which subjected women to different tests from those applied to men were repealed. The result was to add more than 5,000,000 women to the electorate, bringing up the total of female voters

Later grant  
of full suf-  
frage equal-  
ity to women

<sup>1</sup> See p. 212 below.

to something like 14,500,000, as compared with 12,500,000 men—a grand total of 27,000,000, or about 55 per cent of the entire population of the country, as compared with 4 per cent in 1831.

University  
representation  
increased

Far from abolishing university representation, as the government bill of 1912 proposed to do, the act of 1918 increased the number of institutions entitled to be represented, the number of university members, and the number of holders of degrees qualified to take part in the election of university representatives.<sup>1</sup> In general, holders of all degrees (except honorary ones) may now participate, whereas formerly the privilege was restricted to recipients of the older arts degrees. This applies to women equally with men; and in the case of Cambridge, which does not yet give degrees to women, a female may be enrolled as a voter if she can show that she has fulfilled the conditions that would entitle a man to a degree.

Restriction of  
plural voting

Electoral reform under the auspices of a government of which Mr. Lloyd George was head might have been expected to bring plural voting absolutely to an end; and if the Liberals could have had their way, it would have done so. The Conservatives, however—and not merely the members of the party of that name but other people of conservative bent—insisted upon retaining it, for the same reason that they urged adoption of a plan of proportional representation,<sup>2</sup> *i.e.*, to help protect the more educated and wealthy part of the electorate from being submerged by the flood of laboring-class votes. The Liberal leaders pressed their point only to the extent of securing a restriction of the number of votes that any one elector may cast to two, as compared with five, or ten, or in fact any number whatever, under the old system. As matters now stand (since the supplementary legislation of 1928), an elector—man or woman—may vote in one constituency as a resident and in another as an occupier of business premises; or an elector may have a second vote as holder of a university degree. But in no case may a person have more than two votes, or, of course, more than one in any single constituency.

<sup>1</sup> It was practically necessary either to abolish the system or to extend it, because if it was to be continued at all, the claims of certain of the younger universities, and of certain groups of degree-holders of older and younger ones alike, could not be denied.

<sup>2</sup> See p. 207 below.

So far as the composition of the electorate is concerned, few questions now remain to be settled. There are plenty of problems relating to the electoral system generally,<sup>1</sup> but the make-up of the electorate has pretty well passed out of the realm of controversy. It has been suggested that the voting age for both men and women be raised to 25 (as in Denmark, the Netherlands, and Japan), or on the other hand lowered to 20 (as in Germany, Switzerland, and Austria); but there is little interest in the matter. It will continue to be proposed that the separate representation of the universities be terminated, which would mean to abolish the university electorate; and something may be done on this score, even though, as we have seen, the act of 1918 moved rather in the opposite direction. Somewhat related is the question of plural voting. Except as it survives in Britain in the attenuated form of "dual voting," plural voting has become practically obsolete throughout the world. In Britain it still obstructs the fullest realization of equalitarian democracy, and its total suppression is likely to continue to be an issue of some importance. On its present basis, however, it is naturally of less political significance than formerly, and little has been said about it in these last ten or twelve years. Since nobody would suggest that degree-holders be restricted to voting for university members, plural voting will doubtless survive as long as the universities continue to be represented separately. Even so, it would, of course, be possible to cut off at any time the privilege of two votes on the separate bases of residence and occupation; and while there seems to be no strong interest in the matter at present, one may venture the guess that this will be the next point at which statutory change in the composition of the electorate will be made.<sup>2</sup>

Surviving  
suffrage  
questions

<sup>1</sup> Some of these are reviewed in the following chapter.

<sup>2</sup> The act of 1918 and the suffrage system for which it provided are described succinctly in W. R. Anson, *Law and Custom of the Constitution* (5th ed.), I, 105-132, and are given full treatment in H. L. Morris, *op. cit.*, Chap. ix; J. L. Seager, *Parliamentary Elections Under the Reform Act of 1918 as Amended by Later Legislation* (London, 1921); and H. Fraser, *The Representation of the People Acts, 1918 to 1921* (2nd ed., London, 1921). Among numerous books dealing with the enfranchisement of women may be mentioned R. Strachey, *The Cause; A Short History of the Women's Movement in Great Britain* (London, 1928). For purposes of general comparison with the United States, see K. H. Porter, *History of Suffrage in the United States* (Chicago, 1918).



## CHAPTER X

### PARLIAMENTARY ELECTIONS

Irregular intervals between elections

Members of legislative bodies in the United States invariably have fixed terms (two, four, six years, as the case may be), and hence are elected at intervals of uniform length. In Britain, the same is true of county and borough councillors, but not of members of the House of Commons. The latter are elected anew whenever, and as often as, a previous House is dissolved. The Parliament Act of 1911 does indeed make the maximum life of a parliament--and therefore the maximum interval between elections--five years.<sup>1</sup> But under extraordinary conditions, even this limitation may be waived, as happened when, for war-time reasons, the parliament elected in December, 1910, prolonged its own existence until November, 1918.<sup>2</sup>

Dissolutions controlled by the cabinet

From the time when the Reform Act of 1867 prescribed that parliaments should no longer terminate automatically upon the death of the sovereign, the only way in which a parliament has been brought to an end has been by deliberate dissolution, formally decreed by the king, but actually controlled by the cabinet. Of course, a parliament might conceivably go out of existence simply by expiration, *i.e.*, by reaching the limit of its five-year mandate. But in point of fact this is very rarely allowed to happen.<sup>3</sup> Nearly always there is a dissolution--prompted sometimes by the desire of a defeated ministry to save itself by an appeal to the country, sometimes by the obligation of a newly installed ministry to seek an endorsement and mandate from the people, and again sometimes by the decision of a ministry, when enjoying full parliamentary support, to seize a favorable occasion for an electoral triumph conferring a new lease of official life.

<sup>1</sup> The time was shortened to this figure from the previous seven-year period because of the increase of the Commons' power arising from the curbing of the House of Lords. See p. 220 below.

<sup>2</sup> See p. 180 above. It should be noted that such extensions can be made only by an act in which the House of Lords has concurred.

<sup>3</sup> Only once in the last century and a half, *i.e.*, in the case of the parliament of 1867-73.

Three or four years may pass without an election. On the other hand, there may be two elections in a single year, as in 1910, or one in each of three successive years, as in 1922-24. Except in so far as their hands are forced by failure of support in the House of Commons, the matter lies entirely with the prime minister and his associates in the cabinet; and it goes without saying that this gives them and their party a considerable tactical advantage. They can nurse the country along until the situation is ripe, and then announce a dissolution; indeed, they may deliberately "spring an election" so timed as to catch their opponents off their guard, although the trick is familiar and all parties try to be constantly in readiness. The ministers, to be sure, will not make their decision lightly; for their fellow-partisans do not enjoy being put to the trouble and expense of seeking reelection any more than do other people, and besides there is always the possibility of falling victim to miscalculation.<sup>1</sup> One of the main advantages of the cabinet system is its tendency to bring about elections when, and only when, there are genuine issues to be settled.<sup>2</sup> Under the American fixed-term plan, parties and candidates are sometimes hard put to it to find issues when election time inexorably comes round. There are arguments for longer, as well as for shorter, intervals between elections. But the thing chiefly to be desired is that elections shall be possible whenever public affairs reach a juncture where the government needs to be guided by a fresh expression of the will of the electorate.

When an appeal to the country has been decided upon, a royal proclamation is issued which not only dissolves the two houses but indicates "the desire of the king to have the advice of his people in Parliament," instructs the Lord Chancellor to issue the necessary writs, and fixes the days for the nomination and polling. Writs of *summons* are sent to the members of the House of Lords (except the Scottish representative peers) individually; writs of *election* are dispatched to sheriffs of counties, mayors of boroughs, and chairmen of urban district councils, requiring them, as "returning officers," to make proper arrange-

Writs for a new parliament

<sup>1</sup> A notable instance of such misjudgment was the dissolution of 1923, decided upon rather doubtfully by a cabinet that apparently had a long lease of life, in deference to Prime Minister Baldwin's desire to go to the country with a program of tariff reform. See p. 321 below.

<sup>2</sup> France is the one cabinet-government country in which this advantage does not accrue. On the special situation existing there, see p. 305 below.

ments for the selection of members of the lower house.<sup>1</sup> Thus is set in motion the electoral machinery, which does not stop until the new House of Commons is chosen and in session.

Nomination  
of candidates

British elections proceed with alacrity, and on the eighth day after the proclamation (Sundays and other holidays excluded) all nominations must be made. On its face, the nominating process is exceedingly simple. There is neither convention nor primary, and all that is required by law is that a person who aspires to be a candidate shall, on the prescribed day, file with the returning officer a paper setting forth his name, residence, and business or profession, together with the names and addresses of two registered voters of the constituency who propose and second him and of eight others who "assent"—this, and one other thing, namely, a deposit of £150, to be forfeited unless the candidate proves to be unopposed or receives more than one-eighth of the total vote cast in his constituency on polling day. That this latter safeguard against frivolous or useless candidacies is effective is indicated by the fact that as a rule not more than 25 or 30 candidates in the entire country are compelled to pay the forfeit.<sup>2</sup>

How candi-  
dates are  
actually  
selected

Of course, there is more to the matter of nominations than the somewhat casual procedure outlined in the preceding paragraph. There are local party leaders and committees to be taken into the reckoning; also national party organizations at London which may take a hand, even to the extent of furnishing a candidate if none of satisfactory character can be found locally; and as a rule candidates are agreed on—sometimes publicly announced in advance—to avert uncertainty and delay if a dissolution takes place unexpectedly.<sup>3</sup> Contrary to what one might expect, in the great majority of single-member constituencies only two or three candidates enter the lists—more frequently three, now that there is this number of important parties. And one will not be surprised to learn that while ten signatures suffice to meet the requirements of the law, candidates frequently deposit several papers containing scores, and even hundreds, of names of voters of various classes and sections in the constituency, in order to give an impression of popularity. The truth is that the matter is

<sup>1</sup> For the form of the writs, see W. R. Anson, *Law and Custom of the Constitution* (5th ed.), I, 55-56.

<sup>2</sup> A similar plan is followed in Canada and Japan.

<sup>3</sup> For a lengthy list of persons definitely accepted in advance as Liberal candidates, see *Liberal Year Book* (1928), 78-110.

so completely under the control of the party organizations that there is practically no room for candidacies except those which these organizations endorse. The man—especially the beginner—who aspires to be a candidate must either wait until the organization (local or national) invites him or look about for a constituency in which he may ingratiate himself with the people and eventually win acceptance. Often it is far more difficult to obtain adoption as a candidate than to secure election after being nominated. The way is sometimes smoothed, however, by manifestation of willingness to defray one's own campaign expenses.

Who is eligible to be nominated? In other words, what qualifications must a person have in order to be elected and seated at Westminster? Many different regulations have been in effect at various times. Measures passed in the fifteenth century required residence in the county or borough represented. These soon fell into abeyance; but religious tests imposed rigid restrictions, and in the eighteenth century property requirements were added. The last obsolete residential requirement was repealed in 1774, and many members now sit for constituencies in which they do not live;<sup>1</sup> property qualifications, which proved easy to evade through fictitious conveyances of land, were swept away in 1858; and the last survival of religious tests is to be seen in the present rule disqualifying clergymen of the Church of England,<sup>2</sup> ministers of the Church of Scotland, and Roman Catholic priests. Nowadays the only positive requirements are that the member shall be of age, a British subject (by birth or naturalization), and willing to take a very simple oath or affirmation of allegiance compatible with any shade of religious belief or disbelief. Negatively, certain other requirements are imposed by the debarment not only of clergymen of the three historic churches named but of peers (except that Irish peers may sit for any but Irish constituencies), persons holding contracts from the government,

Qualifications

<sup>1</sup> For interesting comment on the accruing advantages, see H. J. Ford, *Representative Government*, 165-170. Under American practice, members of Congress must be residents of the state, but not necessarily of the district, from which they are elected. Except in a few instances in the largest cities, however, congressmen are—by usage as old as Congress itself—almost invariably residents of their districts, and it is not worth while for an outsider to seek election. See J. Bryce, *The American Commonwealth* (4th ed.), I, 191-195, and H. W. Horwill, *The Usages of the American Constitution*, Chap. ix.

<sup>2</sup> Since the disestablishment of the Anglican Church in Wales in 1920, Anglican clergymen in that part of the realm are eligible.

convicts, lunatics and idiots, pensioners of the state (except as former civil servants or diplomats), and holders of office under the crown except such as are regarded as of a political nature. Persons who as candidates for seats have violated the corrupt and illegal practices laws, or have condoned such violation in their behalf, are debarred for seven years, and indeed permanently in respect to the constituency in which the offense occurred.<sup>1</sup>

Women first became eligible under the terms of a Parliament (Qualification of Women) Act of 1918, and at the general election of that year one female candidate was successful—even though, being a Sinn Féiner, she did not take her seat. The first woman who actually served was the American-born Lady Astor, victorious in a by-election at Plymouth in 1919. The qualifications for women are now precisely the same as for men.<sup>2</sup>

The House of  
Commons as  
a mirror of  
the nation

What sorts of people become candidates for seats in Parliament, and win them? The answer is more literally, "All kinds," than it would be in relation to perhaps any other important legislative assemblage in the world, and far more so in relation to the British Parliament today than before the rise of the Labor party to its present importance. On the green benches sit great landowners, sons of peers, bank directors, coal and iron magnates, along with soldiers, sailors, teachers, journalists, clergymen, farmers, miners, and miscellaneous manual laborers. Hardly a business, a social class, a profession, or an interest is without representation. There are lawyers; but a conspicuous and significant contrast with American legislatures, both national and state, is the relatively small number of them and the less important rôle which they play. In 1925, when there were 262 members of the legal profession in the House of Representatives at Washington, there were only 90 in the much more numerous House of Commons at Westminster. There is never a Congress in which lawyers do not preponderate; there is never a House of Commons in which they constitute more than a fifth to a sixth of the membership. On this account, and because of the growing numbers of trade-union officials and other members identified with the working classes, the House of Commons is a considerably

<sup>1</sup> If the violation was without the candidate's knowledge or approval, the penalty does not extend beyond debarment for seven years in the constituency concerned.

<sup>2</sup> In all, 21 different women were elected to the House of Commons from 1919 up to, and including, the general election of 1929; and the female quota in the House elected in 1931 numbered 15.

more perfect mirror of the British population as a whole, in its actual proportions, than is our House of Representatives of the American people generally.<sup>1</sup>

Electoral campaigns in the United States are long-drawn-out, and often rather tedious, affairs. In Britain, they are at least never long-drawn-out. There is a sense, of course, in which they may be said to be going on most of the time. The parties are perpetually sparring for advantage. By-elections to fill vacant seats keep up the spirit of contest. Men who propose to go in for a parliamentary career address public gatherings, subscribe to civic and philanthropic causes, and in a dozen other ways keep themselves before and ingratiate themselves with the people of the constituency to which they are pinning their hopes. Members who want to continue their public careers systematically "nurse" their constituencies in similar fashion. And of course when a dissolution looms in the offing, party committees and candidates set actively to work without awaiting the moment when it will actually befall. The "campaign," however, in the stricter sense of the word, is limited to less than three weeks. Nominations are made eight days after dissolution, and the people go to the polls nine days after that, Sundays and other holidays excluded. In these eighteen or nineteen days, all told, the battle of the ballots must be fought.<sup>2</sup>

Brevity of  
campaigns

Brevity is not the only respect in which the British campaign differs from the American. There is no political platform in quite the sense in which we have it in this country. It is true that the national conferences, or congresses, held by all of the parties at least once a year invariably adopt resolutions setting forth party principles and policies; also that at the opening of a campaign a general statement of the issues to be pressed in that contest is likely to come from the prime minister (in behalf of the

Platform

<sup>1</sup> A full tabulation of the professional connections and interests of the members of the House of Commons in 1928, classified also by parties, is presented in *Constitutional Year Book* (1928), 217. The general election of 1929 reduced the number of lawyers to less than half that in any previous parliament since 1832 and raised the total of trade-union officials to 150, which was quite beyond any earlier figure. On the other hand, the collapse of Labor under the abnormal political conditions surrounding the general election of 1931 reduced the trade-union quota to insignificant proportions and resulted in a House of Commons astonishingly similar to that of Victorian times. See p. 328 below.

<sup>2</sup> Electoral campaigns are relatively brief in all countries having a parliamentary form of government. In France and Germany, they seldom exceed three or four weeks.

party in power), and similarly from the opposition leader or leaders. Every candidate is, however, entitled to issue his own address or manifesto to the people of his constituency, and on this address—which may differ appreciably from any general statement issued by his party and from the addresses of other candidates bearing the same party label—he makes his fight. Authorized by law to send one circular post-free to every voter in his constituency, the candidate can circulate his manifesto without other expense than for printing; and in this way, as a rule, his campaign is formally launched. Too much stress should not, however, be placed upon the platform as a point of contrast between British and American elections. Every British party has, at any given election, a program which is to all intents and purposes a platform. Conversely, convention-made platforms in America frequently play a less important rôle than the pronouncements of individual candidates, as was conspicuously true in the presidential election of 1928.

Appeals to  
the voters

The country is more wrought up at some elections than at others, and contests are keener in some constituencies than in others.<sup>1</sup> But even in the most one-sided fight in the most apathetic election, the appeal to the voters is apt to be of the whirlwind variety. In the course of it, every reputable means known to politicians the world over is employed—and, of course, sometimes expedients not quite so unexceptionable. Meetings are held in halls and parks, and on street corners; advertisements are placed in newspapers; literature, although less than in America, is sent to the voters through the mails; billboards are plastered with cartoons, slogans, and appeals; “sandwich-men” are employed by the day to trudge along crowded streets bearing placards soliciting votes; house to house canvassing is carried on by volunteer friends and supporters of the candidate (hired canvassers are forbidden by law) with a thoroughness rarely known in any other country. Radio broadcasting came into use as a campaign device more slowly than in the United States. But it was employed extensively in the election of 1931, and in future more voters are likely to be swayed via the microphone than by printed literature or public meetings.<sup>2</sup>

<sup>1</sup> As will be pointed out, there are always some constituencies in which, for lack of competition, there is no contest at all.

<sup>2</sup> The feature of the British campaign that would be most likely to interest, and

In it all, the candidate is naturally the leading figure, although much of the planning and actual work are done, of course, by the local party committee, the candidate's official agent, and other persons who are actuated by friendship for the candidate, interest in the "cause," or merely love of the game. There is only a relatively small area to be covered—even though the number of voters to be reached is now, on the average, almost three times as large as before 1918—and the task is carried out with a regard for detail that is rivalled in the United States only by the management of a Tammany campaign in New York City. There is not much place in British political usage of today for the notion of John Stuart Mill that making a personal appeal to the voters is an undignified and improper procedure in a system under which men are supposed to be sent to Parliament to serve the public.<sup>1</sup>

As has been indicated, the campaign is run to some extent with the aid of voluntary, unpaid workers. But there are many things to be settled for—halls used for meetings, newspaper advertisements, postage, printing, billboard space, the services of "sandwich-men"—and without some pretty stringent regulation the wooing of the electors would be likely to prove a decidedly costly performance. It was such, indeed, in the old days, not only because no statutory limits were placed upon expenditures that were inherently proper, but because of the very general practice of buying votes, with money or something equivalent. Within the memory of men still living, a candidate could not expect to get anywhere at all in most constituencies unless he

Campaign  
expenditures

indeed amaze, the American observer is the "heckling" of candidates and other speakers by their audiences. Speakers at political meetings in America are occasionally interrupted by having questions shot at them from the floor or gallery, but incidents of the kind are so rare as to stir comment. In Britain the quizzing proceeds so mercilessly that many campaign addresses become little more than a series of questions, replies, interjections, retorts, thrusts, and parries. It is of no use for the speaker to grow impatient or lose his temper; heckling is part of the game, and he may as well make up his mind to meet it and turn it to his own advantage as best he can. If he is sufficiently quick-witted, tactful, and well-informed to be able to stand up impressively under the barrage, he may easily command more sympathy and win more votes than by the most smooth-flowing and masterful formal speech that he could hope to deliver. In so far as the radio supplants public meetings, it will undoubtedly take the color out of campaigns; as a recent writer has remarked, you can turn off the loud speaker, but you can't heckle it.

<sup>1</sup> Much interesting information concerning British electoral campaigns can be gleaned from P. G. Cambray, *The Game of Politics* (London, 1932). The author was long an official in the Conservative Central Office.



showered food, drink, money, and other tangible favors upon the people; and after the voters had pocketed their bribes and eaten and drunk and smoked and rollicked and had their bills paid at a candidate's expense they were considered men of conscience indeed if they did not end by going over to a still more free-handed competitor.

Corrupt and  
illegal prac-  
tices; the  
graduated  
plan of ex-  
penditures

Today a different state of things obtains. A Corrupt and Illegal Practices Prevention Act of 1883, consolidating earlier legislation on the subject, and stiffened by later amendments, effectively regulates the whole matter of campaign expenditures — and, indeed, electoral manners generally. This it does, first, by defining and penalizing *corrupt* practices, *e.g.*, bribery, treating, intimidation, personation, and falsifying the count, all of which are acts involving moral turpitude; second, by defining and more lightly penalizing *illegal* practices, *i.e.*, acts which, while not inherently immoral, are deemed contrary to good electoral practice, such as the hiring of canvassers, paying for conveyances used in getting voters to the polls, or voting or attempting to vote in more constituencies than the law allows; and, third, by rigorously limiting the amount of money which candidates may spend, or which may be spent in their behalf. In the matter of the amount, it is recognized that it would be unfair to fix a flat maximum sum; obviously it will cost more to carry on an equally intensive campaign in a county constituency, with the people somewhat scattered, than in a borough constituency, and, in addition, constituencies of the same type differ widely, as we have seen, in population. Hence a sliding scale has been adopted in terms of numbers of voters. As the law now stands (following changes in 1918 and 1928), the maximum permissible expenditure—dating from the time when the party organization formally “adopts” the candidate—is in county constituencies 6*d.* (12 cents) per elector, and in borough constituencies 5*d.* (10 cents). Every candidate must have a single authorized agent charged with the disbursement of money in his behalf, and within 35 days after an election this agent must submit to the returning officer a sworn statement covering all receipts and outlays. The heavy increase of the electorate under the suffrage legislation of 1918 and 1928 permits, of course, the outlay of rather large sums; and the records of election cases brought into the courts indicate that the limits are sometimes transgressed. Furthermore, the

American plan of placing restrictions upon the sources from which funds may be drawn and requiring publicity for contributions has not been tried. The regulations thus far imposed have, however, purified politics appreciably by restraining the outpouring of money by candidates and their backers, and in doing so have made it possible for men of moderate means to stand for election who otherwise would be at grave disadvantage as against wealthier and more lavish competitors.<sup>1</sup> An additional source of relief is the payment, since 1918, of the costs of the election itself—polling-stations, printing, clerk hire, fees and travelling expenses of returning officers, etc.—out of the national treasury, rather than from assessments levied upon the candidates. On the other hand, no law touches the outlays that may be made before and after the brief “electoral period”; and few persons who propose to seek election, or reelection, are so happily situated as not to be obliged to spend generously, and with as much grace as they can muster, on all sorts of local charities and other causes dear to the hearts of the people from whom their votes must come. Constituencies have to be “nursed” both before and after they are won, by techniques which no student of the power of money in politics can afford to ignore.<sup>2</sup>

When the campaign has run its course and polling day arrives, who is entitled to vote? Manifestly, only persons who come within the bounds of the suffrage laws, chiefly the acts of 1918 and 1928. There is, however, a further important requirement, dating from the Reform Act of 1832: such persons may vote only if their names are on the electoral register of the constituency. The existing law on this subject (contained in the act of 1918, as amended in 1926) is based on the principle that it is the business of the state to see that every qualified person, man or woman, is put on the register in the proper constituency (or constituencies); and while the lists are, of course, not infallibly accurate, they are made and kept up to date with remarkable care and thoroughness. Practically no burden is placed upon the electors. In every

Registration  
of voters

<sup>1</sup> The Labor party would like to see (1) permissible per capita expenditures reduced to 5*d.* in counties and 4*d.* in boroughs, (2) the use of motor-cars for carrying able-bodied voters to the polls made illegal, and (3) publicity required not merely for expenditures in behalf of individual candidates but for all party accounts, national and local.

<sup>2</sup> On British party finance, see pp. 354-357 below, and especially J. K. Pollock, *Money and Politics Abroad* (New York, 1932), Chaps. ii-x.

county and borough there is a registration officer—commonly the clerk of the council—whose business it is, under the general direction of the Home Office at London, to compile and revise the list of parliamentary, as well as that of local, electors;<sup>1</sup> and this he does by sending canvassers from house to house in July of each year with copies of the last previous list on which are to be entered all changes that are discovered. The results—embodied in three lists, (1) the register then in force, (2) the new voters proposed to be added, and (3) the names proposed to be stricken off—are assembled and printed, and copies are placed on exhibit in the town or county hall, at post offices and libraries, and even at the doors of churches and chapels, so that anybody who has been missed can discover and report the fact, and any other error can be noted and corrected. The definitive list thereupon prepared holds good for the twelve months beginning the following October 15; and no person whose name does not appear on it may vote during this period.

Election day  
and polling  
day

Formerly, when the sheriffs and mayors, as returning officers, received writs of election they exercised their discretion, within limits set by law, in fixing the election day in their respective constituencies, and also the polling day if one was necessary. As a result, from a week to upwards of two weeks elapsed from the time when the first results were known until the last ones were declared, and it was often possible for the constituencies voting late to see in advance how the contest was coming out and to swing their votes accordingly if any motive appeared for doing so. In any event, the country was kept in electoral turmoil for many days, suffering some of the inconveniences that are entailed in the United States by an excessively prolonged preëlection campaign. The act of 1918, however, changed all this. As has been explained, the eighth day after the proclamation goes forth is now election day for all constituencies, and the polling takes place nine days thereafter, the only exception being the university constituencies, whose voting is principally by mail and is spread over some five days. Election is really "election" day literally in only those constituencies in which there is no contest. In such cases, the single candidate is formally nominated, the returning officer declares his election,

<sup>1</sup> These lists are, of course, not identical. The expense of preparing them is divided equally between the borough or county and the national treasury.

and the transaction completes itself without any voting at all. The number of such uncontested elections is not as large as it used to be when Ireland still had her hundred-odd seats and most of them were filled with Nationalists against whom it was useless to make a fight. But there are always cases of the sort—sometimes many of them—in other parts of the kingdom.<sup>1</sup> Where there is a contest, election day, so-called, is merely the day on which the nominations are made, the election itself being adjourned to the ninth succeeding day in order that a “poll,” or count of votes, may be held to decide which candidate shall have the seat.

Until about half a century ago, voting was by show of hands at a public meeting of the electors, and, in view of what has already been said about electoral manners, it is hardly necessary to add that polling days were tumultuous occasions. Rivers of beer were set flowing; bribes were openly offered and accepted; organized bands of “bludgeon-men” went about intimidating and coercing electors; non-voters thrust themselves joyously into the fray; political convictions were expressed in terms of rotten apples and dead cats; heads were broken and a generally riotous time was had by all. From 1832 onwards, reformers persistently demanded the introduction of voting by secret ballot. The change did not come, however, until 1872, and even then it was made over the protest of no less enlightened a student of government than John Stuart Mill.<sup>2</sup> The Parliamentary and Municipal Elections Act (commonly known as the Ballot Act) passed in the year mentioned was limited to an eight-year period, and from the expiration of that time until 1918 it was kept alive solely by being included in an annual blanket act providing for the continuance of sundry expiring laws. Thereupon, however, it was converted from an annual into a permanent statute; and certainly no feature of British political methodology is now to be regarded as more firmly established.

The secret  
ballot

<sup>1</sup> In 1922 there were 57; in 1923, 50; in 1924, 32; in 1929, 7; in 1931, 67. It is hardly necessary to point out that, on account of these constituencies in which the electors are not brought to the polls, the popular vote of the country as actually recorded does not indicate the total popular support enjoyed by the various parties.

<sup>2</sup> Mill's argument was that, the suffrage being a public trust, confided to a limited number of the community, the general public, for whose benefit it was exercised, was entitled to see how it was used, openly and in the light of day. *Representative Government*, Chap. x, “On the Mode of Voting” (ed. by A. D. Lindsay, pp. 298-312).

The process  
of polling

What happens when Mr. X, green-grocer of Putney, or Mrs. Y, housewife of Cheltenham, steps into the polling place prepared to do his or her part to save the nation from disaster? First of all, a poll clerk asks the name and address. These obtained, the information is checked against the registration list; and if there is no discrepancy, the elector is handed a ballot. It would be a novel and disconcerting experience for any elector in Britain to find in his hands a "blanket" ballot, or a sheaf of half a dozen separate ballots, of the sort with which the American is ordinarily expected to wrestle. For, in national elections invariably, and in local elections usually, he is called upon to express his choice among only two or three candidates, for but a single position. Consequently, the ballot which he receives at a parliamentary election is a very simple affair—a bit of white paper hardly larger than an ordinary postal card, numbered on the back and bearing the official stamp on back and front, but devoid of party names and emblems, and indeed containing nothing but the names, addresses, and vocations of the candidates, arranged in alphabetical order. These ballots are put up in the style of check-books, each paper having a counterfoil or stub; and as the poll clerk detaches a paper and gives it to an elector he writes on the stub the elector's number on the register, which of course makes it possible to trace the vote of any elector should occasion arise. Taking his paper to a screened compartment, the voter makes a cross in the space to the right of the name of the candidate of his choice; and then, folding the ballot so as to conceal the marking, but leaving the stamp exposed, he drops it in the ballot box and goes his way. If a voter is unable to mark the ballot himself, the presiding officer may mark it for him, in the presence of the candidates' agents.<sup>1</sup>

Every candidate, it may be noted, has a right to have an agent present throughout the polling for the purpose of checking off the names of those who vote, watching for attempts at fraud, and challenging persons who are suspected of trying to vote under false names. Challenges are, in point of fact, not very numerous, and are sustained or overruled by the presiding

<sup>1</sup> Under acts of 1918 and 1920, voting by mail, and also proxy voting, is permitted under certain conditions. See F. A. Ogg, *English Government and Politics* 300-301.

officer, with no appeal from his decision. Agents as well as officials are bound by oath not to divulge who have voted, and are forbidden to seek to induce anyone to tell how he is going to vote or has voted, or, indeed, to interfere with the voter's freedom in any way, save only to establish his identity in case there is question.<sup>1</sup>

Contrary to American practice, the count is made, not at the several polling places, but at some central point in the constituency (usually the town hall or county hall); and it is made by the returning officer or one of his assistants in the presence of the candidates' agents.<sup>2</sup> Furthermore, before it is made all of the ballots turned in for the constituency are mixed together, so that the result is never published for polling places, or precincts, separately, but only for the constituency as a whole. When the outcome is determined, the writ which served as the returning officer's authority is endorsed with a certificate of election, and, together with all of the ballot papers, is transmitted to the clerk of the crown in chancery, an official in the Lord Chancellor's office, by whom the writ was originally sent out. This official copies into a book the names of all the persons certified as elected and delivers it to the clerk of the House of Commons to be used in making up the roll when the new parliament assembles.

The electoral  
count

Certification of the successful candidate by the returning officer of the constituency is not necessarily the last stage or step in the electoral process. For if a defeated candidate—or, for that matter, any voter—believes that there has been a miscount, or that the victor or his agents have been guilty of corrupt or illegal practices, or that the victor is ineligible, he can petition to have the election invalidated. If the question is merely one

Contested  
elections

<sup>1</sup> As a rule, British electors are far less remiss about going to the polls and voting than are Americans. For example, in the parliamentary election of 1924 16,384,629 votes were polled in an electorate of 21,729,385, amounting to almost 75.5 per cent, as compared with 29,138,935 in an electorate of 56,941,584 in the presidential election in the United States in the same year, amounting to only 49.1 per cent; and this takes no account of the large number of British voters not called to the polls because of the lack of a contest in their constituencies. Nevertheless, the considerable success of compulsory voting in the Commonwealth of Australia has led to proposals that the plan be adopted in the mother country.

<sup>2</sup> Central counting is not entirely unknown in the United States. It is in use in San Francisco and under a California law of 1921 may be extended to any city or city-and-county in the state.

of legal eligibility, the House itself settles it. But if it relates to any electoral irregularity, it goes, not to the House, but to two judges of the King's Bench division of the High Court of Justice,<sup>1</sup> selected for each case by the whole body of judges in that division. They take evidence in the county or borough in which the election occurred and certify a report to the House, in accordance with which the member in question keeps his seat or loses it. In the United States, the House of Representatives is judge of the qualifications of its members in the full sense that all disputed elections are decided by investigation and vote of the House itself, and prior to 1868 the same plan prevailed in Great Britain. Partisan handling of electoral contests in that country led, however, in 1868, to adoption of the present highly preferable system. Protests are not numerous nowadays, and the actual voiding of an election is a rare event.<sup>2</sup>

Voluntary  
vacating of  
seats

It sometimes happens that a member of the House of Commons wants to retire. His health may have failed; or he may want to engage in some private undertaking that will absorb all his time and energy. Here, however, a curious fact presents itself, namely, that under a rule dating from 1623 a member cannot resign his seat, just as, indeed, he cannot refuse to take it even if nominated and elected against his will. He may be dropped because he has gone into bankruptcy or become a lunatic; he may be expelled for any reason deemed sufficient by the House, *e.g.*, conviction on charges of treason or felony; he may be translated, willingly or unwillingly, to the House of Lords; but he cannot resign outright. This does not mean, however, that there is no way by which he can voluntarily sever connection. There is a roundabout way, which consists in procuring appointment to some public office which under the statutes is incompatible with membership. There are, of course, many such offices. But the one usually sought for the purpose is the stewardship of His Majesty's three Chiltern Hundreds

<sup>1</sup> In cases relating to England and Wales; the Court of Session, in cases relating to Scotland; and the High Court of Justice, in those relating to Northern Ireland.

<sup>2</sup> Brief general accounts of the electoral system as it stood before the act of 1918 will be found in A. L. Lowell, *op. cit.*, I, Chap. x, and M. Ostrogorski, *Democracy and the Organization of Political Parties*, trans. by F. Clarke (London, 1902), I, 442-501. Electoral procedure nowadays is described in popular fashion in M. MacDonagh, *The Pageant of Parliament*, I, Chaps. i-iv, and more thoroughly in J. R. Seager, *Parliamentary Elections under the Reform Act of 1918, as Amended in Later Legislation* (London, 1921).

of Stoke, Desborough, and Burnham, in Buckinghamshire. Centuries ago, this officer was appointed by the crown to have the custody of certain forests frequented by brigands. The brigands are long since dead, and the forests themselves have been converted into parks and pasture lands, but the stewardship remains. The member who wishes to give up his seat applies to the Chancellor of the Exchequer for this, or for some other old office with nominal duties and emoluments, receives it, "with all wages, fees, allowances, etc., and thereby disqualifies himself, and afterwards retains it only until such time as the appointment is revoked to make way for another man. No way, however, has ever been devised by which a constituency, on its part, can rid itself of a duly elected representative before the dissolution of a parliament to which he has been chosen, no matter how grossly he may neglect his duties or otherwise abuse the confidence of the voters.

It is too much to ask of an electoral system that it give universal satisfaction. People have very different ideas as to what would constitute an ideal arrangement; groups or interests that fare badly under an existing plan can be counted on to favor adopting a different one; and even if a particular scheme met with general approval at a given time, it would soon call for revision because of shifts of population and other changes of situation. As the foregoing pages testify, the British system has been improved at many points in the last fifty or sixty years. In very few respects, however, can it be regarded as having attained anything approaching finality, and future generations will no doubt hear quite as much discussion of "electoral reform" as have past ones. Though hardly to be regarded as major questions, plural voting and university representation will continue to stir differences of opinion. Lacking any provision for periodic redistribution of seats, the country will see its electoral areas grow more and more unequal in population, until finally, after spirited agitation such as preceded the legislation of 1885 and 1918, a hard-won act of Parliament will make a sweeping reapportionment—unless in the meantime the electoral map is redrawn in connection with the adoption of some scheme of proportional representation. Already, the introduction of one device or another for securing that members shall be elected

Outlook for  
further elec-  
toral changes



in their constituencies by majorities, rather than (as now so frequently happens) by mere minorities, has taken rank as a major question. The same is true of ably supported proposals looking to the representation of minorities under some plan of multi-member districts. Even the suggestion that the geographical basis of representation be displaced by an occupational, or functional, basis, though less frequently heard today than a few years ago, may become a leading theme of debate.

The question  
of majority  
election

For the present, and leaving minor readjustments out of account, interest centers chiefly in two questions, *i.e.*, majority election and minority representation—the one springing almost entirely from, and the other greatly aggravated by, the breakdown of the old bi-party system. The problem of majority election presents itself concretely whenever as many as three candidates seek election in a constituency and no one of the number polls more than a plurality of the votes cast. Thirty years ago, it was rare for more than two candidates—a Conservative and a Liberal—to oppose each other in a constituency. Whichever secured the more votes not only was elected, but of course was elected by majority; and though unrepresented minorities might be large, they were, after all, only minorities, which, under prevailing opinion, had no claim beyond the right to convert themselves into majorities at the next election if they could. Individually, the members of the House of Commons sat for majorities in their constituencies, and collectively the House could be regarded as, by and large, representing and speaking for the majority of the nation. The rise of the Labor party brought a very different situation. In increasing numbers of constituencies, three candidates rather than two were placed in the field when an election was to take place; and, as would be expected, the popular vote was often so divided among the three that while candidate A came off victor by virtue of receiving more votes than either of his opponents, his poll was decidedly smaller than those of candidates B and C combined, with the result that he went to Westminster by the choice of less than half of the people whom he was to represent. At the election of 1929, there were “three-cornered” contests for no fewer than 470 out of a total of 607 contested seats; and in 288 of the number the victor polled less than half of the votes cast. Except under

very unusual circumstances such as prevailed in the election of 1931, this is the sort of thing that may be expected to occur at every election so long as there are three parties with large popular followings; and it is not to be wondered at that strong demand has arisen—particularly from political elements that regard themselves as suffering most from the situation—for changes that, in one way or another, will prevent the election of any member except by majority vote.<sup>1</sup>

One device proposed to this end is the "second ballot," a familiar feature of French and of pre-war German electoral practice. If adopted, it would mean that in any district in which no candidate received a majority at the first balloting, the voters would be called to the polls a second time, after an interval of a week or two, to indicate their preference as between the two candidates standing highest. This, of course, would result in a majority. Objections to the plan include the additional expense entailed (as well as extra trouble for the voters), and the danger that the final outcome would be determined largely by personal and party intrigue and bargaining between the ballotings; and to obviate these drawbacks an "alternative vote" plan has been proposed under which the voters in three-cornered contests would be expected to indicate first, second, and third preferences among the candidates, so that, in case of lack of a majority of firsts for any candidate, an effective majority for some one of the three could be arrived at by dropping the candidate standing lowest and distributing his seconds, and if necessary, his thirds also. This would enable the advantages of majority election to be realized without calling the voters to the polls a second time; and it is fair to assume that if any majority-election scheme is adopted, this will be the one. The alternative vote was recommended by a royal commission reporting in 1910; it figured prominently in the discussions of 1918; and a tri-partisan electoral conference appointed by Prime

Proposed  
solutions:  
second ballot  
and alterna-  
tive voting

<sup>1</sup> The publications of the Proportional Representation Society abound in "horrible examples." To cite merely two or three random instances, drawn from the election of 1929: (1) in Cambridgeshire, the Conservative candidate won with 13,306 votes as against 11,256 and 10,904 for the Labor and Liberal candidates, respectively; in King's Lynn, Norfolk, a Conservative triumphed with 14,501 votes, as against 10,806 and 10,356 for the Liberal and Labor candidates, respectively; in Northwich, Cheshire, 15,477 votes served to give a Conservative candidate victory, though his Labor and Liberal competitors received 15,473 and 14,163 votes, respectively.

Minister MacDonald in 1929, though unable to reach unanimous conclusions, weighed the relative advantages of the alternative vote and proportional representation, bringing to light the unwillingness of the Conservative members to endorse the former under any conditions, the willingness of some of the Labor members to accept it if accompanied by other reforms, and the readiness of Liberals to accept it alone if proportional representation were not found feasible.<sup>1</sup> An electoral reform bill providing for the alternative vote was presented to Parliament by the government in 1930, but was eventually dropped.

The problem of minority representation—proposed solutions:

1. The limited vote

The second major electoral question—that of minority representation looks in quite a different direction. The object of majority-election reformers is to bring it about that members will never represent mere minorities in their constituencies; the object of minority-representation advocates is to provide a way by which precisely such minorities will be assured of representation. Interest in minority representation arose simultaneously with the movement for a broader suffrage and gained in intensity as the electorate progressively expanded and minorities, as well as majorities, grew larger and more articulate. The first device hit upon by reformers was that known as the “limited vote” and consisted of a scheme under which, in constituencies returning three or more members, the electors were to vote for two candidates only, or at all events for some number less than the full quota of seats to be filled—the idea being that the majority elements in the constituency would concentrate their votes upon certain candidates of their preference, leaving the remaining choices to be made by the minority. An experiment with this plan in 13 multiple-member constituencies under terms of the Representation of the People Act of 1867 served only to show that a majority party can, by clever manipulation, so distribute the votes of its supporters as to capture all of the places, thus frustrating the sole purpose for which the scheme exists.

Another device brought forward in the same mid-century

<sup>1</sup> The conference was presided over by Lord Ullswater (former Speaker Lowther). For its report, see Cmd. 3636 (1930). In view of the Conservative attitude, it is interesting to note that if alternative voting had been used in the elections of 1929, the party probably would have won more seats than either of its competitors, and might very well have remained in office during the next few years.

period was that of "cumulative voting," under which the elector has as many votes as there are seats to be filled and is permitted to distribute them among an equivalent number of candidates or to concentrate them upon a lesser number, or even to bestow all of them upon one, at his discretion. By cumulating votes upon a minority candidate, a small but well organized political element may be able to push him over the line. An effort was made to get a provision of this kind into the act of 1867, but without avail; and the only use of the system that has ever been made in Britain was in connection with school-board elections from 1870 to 1902.

2. Cumulative voting

Meanwhile still another plan had been devised. In 1857, Thomas Hare published a pamphlet entitled *The Machinery of Representation* (enlarged and republished as *A Treatise on the Election of Representatives, Parliamentary and Municipal* in 1859) proposing a system which, as later elaborated, presented the following main features: (1) multi-member districts—already in common use—should be retained; (2) voting by ballot should be introduced; (3) the ballots should be so arranged that the voter could indicate his first, second, third, and other choices among the candidates; (4) after the votes were cast, an electoral "quota" should be determined in each district, being the smallest number of votes certain to assure election;<sup>1</sup> (5) at the first count of votes, only first choices were to be included, and any candidates receiving the quota (or more) on this basis were to be declared elected; (6) if—as was almost certain to be the case—seats remained to be filled, any votes not needed by the successful candidates were to be transferred to candidates indicated as second choice—or, if not needed by such candidates, to those designated as third choice, and added on at the proper places; (7) if, after this process was exhausted, vacancies still remained, the candidate at the bottom should be declared defeated and his votes transferred to the voters' next choice, etc., until all places were filled. The voter, it will be observed, was always to vote for only one candidate (indicating, however, the sequence of candidates for whom he would be willing to have his vote counted); and by means of the ar-

3. Proportional representation

<sup>1</sup> This quota was to be determined according to the following formula:

$$\frac{\text{Total number of votes cast}}{\text{Number of seats to be filled}} + 1.$$

rangement for transferring votes, he was to be reasonably assured that his vote would actually count for some one. Thus arose the characteristic English type or plan of proportional representation—the plan of the “single transferable vote”—as distinguished from the “list” system preferred in Continental Europe, under which the voter casts his ballot for a party list or ticket and the seats are distributed among the parties in proportion to the number of votes that their lists have polled.<sup>1</sup> In his classic treatise, *Representative Government*, published in 1861, John Stuart Mill endorsed the single transferable plan as “among the very greatest improvements yet made in the theory and practice of government.”<sup>2</sup>

Ever since Hare and Mill wrote, the foregoing proposal has been before the English people as a possible mode of solving their minority-representation problem. Efforts to get the plan into the Representation of the People Act of 1884 failed; and in 1885, as we have seen, a single-member-district scheme was adopted which—although defended by Gladstone as in the interest of minorities—was inherently incompatible with the proportional idea. A Proportional Representation Society, however, was organized in 1884; literature was published; and each new adoption of the proportional principle abroad—in the Swiss cantons in 1891 and after, in Belgium in 1899, in Sweden in 1907, and especially in Tasmania in 1907 and South Africa (for senatorial elections) in 1909—was made an occasion for bringing the cause afresh to Englishmen’s attention. The royal commission on electoral reform which reported in 1910<sup>3</sup> commended the principle of the alternative vote and took the position that proportional representation was not adapted to existing British conditions. Friends of the plan refused, however, to consider this judgment final.

One will not be surprised to learn that the subject came into renewed prominence when the electoral system was being overhauled at the close of the World War. The Speaker’s Conference which prepared the plan for the act of 1918 unanimously recommended a nation-wide scheme under which pro-

The proportional plan and the electoral law of 1918

<sup>1</sup> See pp. 537, 736 below.

<sup>2</sup> In Chap. vii, “Of True and False Democracy” (Everyman’s Library ed., p. 263).

<sup>3</sup> Cmd. 5163 (1910).

portional representation should be employed in all multiple-member constituencies that might result from the impending redistribution; and the House of Lords, looking forward apprehensively to the day when wealth and education would probably be in an even more decided minority than they were at present, held out resolutely for an all-round application of the proportional principle. Five times the House of Commons rejected the plan, in one form or another, and for weeks the deadlock threatened the whole bill and even the life of the ministry. In the end the popular chamber won, although not until it had agreed to an optional provision for the appointment of a commission to prepare a plan for the election of approximately 100 members by proportional representation in specially formed constituencies returning from three to seven members each. The experiment was actually to be undertaken only if definitely arranged for at a later time by parliamentary vote; and such action has never been taken, or even seriously considered. Proportional representation fell short under the legislation of 1918;<sup>1</sup> but it was raised to the dignity of a great national issue.

Throughout its history the proportional plan has been supported in Britain from two main directions, *i.e.*, by disinterested students of government like Hare and Mill and by political elements and forces which considered that their position would be improved if the system were adopted. In 1918, it was the Conservative House of Lords that was most appealed to by the practical aspects of the matter. Even then, however, most of the Conservatives in the lower house were voting against the plan, and the Liberals for it; and in after years it was the Liberals, suffering eclipse as a great party and feverishly seeking ways and means of rehabilitation, who chiefly saw practical advantages in the scheme. In 1924, with a Labor government in office but dependent upon Liberal support, the time seemed ripe for action. A private member's bill on the subject was, however, rejected decisively by Conservative and Labor votes. At the general election of 1929, the Liberals increased their popular vote by upwards of two and one-half millions, but

Present status of the movement

<sup>1</sup> The failure was not quite complete, in that university members (in the case of multiple-member constituencies) were henceforth to be chosen according to the proportional plan.

obtained only 12 additional seats;<sup>1</sup> and, naturally, the party leaders renewed their demand for a proportional system. At one time, Labor would have been prepared to lend enthusiastic support. Its astonishing successes under the existing system had, however, changed its point of view; and when, in 1929, the MacDonald government set up the Ullswater tri-party conference already referred to and instructed it to work out a plan for "securing that the composition of the House of Commons shall properly reflect the views expressed by the electorate," it had small relish for the undertaking. In the conference, the Liberals strongly supported the proportional plan; the Conservatives thought better of it than of the alternative vote, but were mostly unconvinced that any change at all was desirable; Labor was apathetic. The farthest that the conference could go, after acknowledging its inability to hit upon a plan that all elements would accept, was to express a majority opinion that if any change in the existing system were to be made, it should be in the direction of adopting proportional representation with the single transferable vote.

Since the World War, the proportional plan has made large conquests, not only in Continental Europe (Germany, Austria, Poland, Czechoslovakia, Yugoslavia, Holland, Finland, and

<sup>1</sup> The relation of votes polled in this election to (a) seats actually obtained and (b) seats that would have been obtained on a proportional basis was as follows:

PARTY	VOTES POLLED	SEATS OBTAINED BY VOTES	SEATS IN PROPORTION TO VOTES	COST IN VOTES PER SEAT OBTAINED
Conservative	8,656,225	256	232	34,000
Labor	8,380,512	288	225	20,000
Liberal	5,308,738	50	143	90,000
Others	203,900	5	8	—
Totals	22,048,375	608 *	608	

\* Not including 7 uncontested seats

The same data for the election of 1931 are as follows:

PARTY	VOTES POLLED	SEATS OBTAINED BY VOTES	SEATS IN PROPORTION TO VOTES	COST IN VOTES PER SEAT OBTAINED
Government parties (Conservative, Liberal, National Labor)	14,531,925	493	368	20,000
Labor	6,648,023	46	168	144,000
Independent Liberal	106,106	4	3	26,000
Others	371,252	5	9	—
Total	21,657,306	548 *	548	

\* Not including 67 uncontested seats.

many other states), but also within the British Commonwealth—in various Canadian provinces, in India, in Northern Ireland and the Irish Free State, in Malta, and in mandated Southwest Africa. It has been abandoned in France, Italy, and Greece, and for the election of members of the House of Commons in Northern Ireland; in “Nazi” Germany, too, it has entirely ceased to function. Outside of English-speaking countries, however, it still prevails widely. Britain cannot go over to it without sweeping away the entire existing scheme of single-member constituencies and redividing the country into districts returning three or more members—a step which, even though it would involve merely a revival of the historic multiple-member type of constituency which was the usual thing up to half a century ago, would have to be supported by a vast amount of argument. There is apprehension lest so exact a representation of the varying shades of political opinion as the proportional plan contemplates would result in destruction of the traditional type of party government—already shattered, to be sure, but still cherished as an ideal and a hope—and in opening the way permanently for something like the multiple-group system of France and other Continental countries. It is argued too, even if not very convincingly, that any proportional plan would be too complicated to be understood by the people, or to be administered effectively; likewise that in the larger constituencies that would be required, such personal contact as now exists between members and their constituents would largely be lost. At bottom, however, the politicians habitually regard the whole matter from the viewpoint of personal and party advantage; and on that basis the ultimate fortunes of the cause are likely to be determined.<sup>1</sup>

<sup>1</sup> On proportional representation in general, see W. W. Willoughby and L. Rogers, *Introduction to the Problem of Government*, Chap. xv; H. L. McBain and L. Rogers, *The New Constitutions of Europe*, Chap. v; and J. H. Humphreys, *Proportional Representation* (London, 1911). The plan is advocated for Britain in Humphreys, *Practical Aspects of Electoral Reform; A Study of the General Election of 1922* (London, 1923); J. F. Williams, *Proportional Representation and British Politics* (London, 1914), revised and republished as *The Reform of Political Representation* (London, 1918); and many other books and articles, including the files of *Representation* and other publications of the Proportional Representation Society. It is opposed in G. Horwill, *Proportional Representation; Its Dangers and Defects* (London, 1925), and H. Finer, *The Case Against Proportional Representation* (Fabian Society Tract, 1924). A complete list of countries and other areas in which it was in effect in May, 1931, will be found in *Parliament and Electoral Reform* (published by the Proportional Representation Society), 28–30.



## CHAPTER XI

### THE HOUSE OF LORDS AND THE PROBLEM OF A SECOND CHAMBER

A variegated  
rôle

Until hardly more than a hundred years ago, the House of Commons was less conspicuous, and had less actual power, than the venerable body which sits at the opposite end of Westminster Palace. Nowadays, of course, this is far from being true. A "second" chamber has become "secondary" as well. A leading political party, *i.e.*, Labor, favors suppressing it altogether, and every one concedes that if the country were to find itself engaged in formulating a new constitutional system, nothing resembling the present upper house would find a place in it. More than anything else, English precedent has been responsible for the spread of the bicameral system around the world. Nevertheless, English experience with the House of Lords in the last half-century has encouraged one country after another, especially in post-war Europe, to write into its constitution provisions endowing its second chamber with cautiously devised checking power but nothing more. Despite all this, the oldest and largest upper house in the world is still an interesting and important institution. Whatever may happen to it in the future, it certainly cannot be left out of the picture of British government as now existing. What to do with it is, indeed, one of the nation's major constitutional problems.

Groups of  
members:

Descended historically from the Great Council of the Norman-Angevin kings, and left in the position of a separate chamber by the rise of the House of Commons in the fourteenth century, the House of Lords nowadays includes as many as six distinct classes, or groups, of members: (1) princes of the royal blood, (2) hereditary peers, (3) representative peers of Scotland, (4) representative peers of Ireland, (5) lords of appeal (or "law lords"), and (6) lords spiritual. A hasty review of these various groups will go far toward revealing the sort of body that the much-discussed and oft-maligned assemblage now is.

The first group need not detain us. It consists simply of such

male members of the royal family (usually not more than three or four at a given time) as are of age and within specified degrees of relationship, and is quite devoid of practical importance. Rarely does a prince of the blood darken the doors of the chamber, and never does one take actual part in the proceedings.

1. Princes of the royal blood

By far the most important group numerically is the hereditary peers; indeed, more than nine-tenths of the approximately 740 members belong in this category, and it is mainly the lavishness with which peerages have been created in the last fifty years that has enlarged the body to its present proportions. With slight exceptions (to be noted presently), all peers are *ipso facto* members of the House of Lords. The term "peer" means "equal"; and its earliest use in English constitutional terminology was to denote the feudal tenants-in-chief of the crown, all of whom were literally peers one of another. As the separation of greater barons from lesser ones progressed, the term became restricted to the greater ones, who, as we have seen, formed an important element in the developing House of Lords, and before the end of the fourteenth century it was being used to denote exclusively those members of the baronage who were accustomed to receive a personal writ of summons when a parliament was to be held. Gradually the principle was established, not only that a baron who once received a writ of summons was entitled to receive a writ on all later occasions when a new parliament was to meet, but that the receipt of such a writ, even a single time, operated to confer an hereditary right; and also that a peerage descending by inheritance must be accepted and held until death by the proper heir.<sup>1</sup> More than once it has happened that a member of the House of Commons who would have preferred to continue his career in that body was compelled, upon coming into a peerage, to accept translation to the less active and important House of Lords. Possession of a peerage is a purely personal matter. It gives the possessor himself certain privileges, mainly a title and a seat in the House of Lords. But his children, including the heir to the title as long as he is merely heir, remain commoners.<sup>2</sup>

2. Hereditary peers sitting by their own right

<sup>1</sup> This does not mean, however, that a man who is offered a peerage not previously existing is obliged to accept it. Gladstone, for example, repeatedly declined peerages that were tendered him.

<sup>2</sup> Custom permits eldest sons to bear "courtesy" titles, which sometimes cause bewilderment among the uninitiated; but they are none the less commoners. See W. B. Munro, *Governments of Europe* (rev. ed.), 108, note 2.

The peerage is, therefore, quite unlike the nobility of Continental countries in earlier times, which invested families, and not merely individuals, with special status; properly, it should not be referred to as a nobility. Furthermore, the distinction of five different ranks, or grades, of peers—designated by the titles duke, marquis, earl, viscount, and baron, and all dating back several centuries—while of considerable social significance, is of no political import.

How peers  
are created

Technically, peers are created by the sovereign; but in practice the matter is controlled by the cabinet (mainly by the prime minister); and the object may be to honor men of distinction in law, letters, science, art, statecraft, or business, or to win the favor and support (perchance, contributions to party funds) of a man of influence or wealth, or to change the political complexion of the house sufficiently to enable a hotly contested measure to be passed,<sup>1</sup> or to keep in Parliament a useful man who for one reason or another cannot continue finding a seat in the House of Commons. There is no limit upon the number that may be created,<sup>2</sup> or upon the kind, except that, under existing law, the crown cannot add to the historic Scottish peerage by creating a peer of Scotland, or direct the devolution of a dignity otherwise than in accordance with rules applying to the transmission of land. Certain classes of persons, however, are ineligible—speaking strictly, ineligible to sit in the House of Lords, which comes to pretty much the same thing. These are (1) persons under 21 years of age, (2) aliens, (3) bankrupts, (4) persons serving a sentence on conviction of felony or treason, and (5) women. Some of the older peerages can be inherited and transmitted by women, and vigorous efforts have been made in the last 15 years to induce the House of Lords to give seats to “peeresses in their own right,” of whom there were, in 1934, 25. This object, however, has not been attained.<sup>3</sup>

<sup>1</sup> Thus in 1711 Queen Anne and her ministers created 12 new peers in a batch so as to obtain a majority for the treaty of Utrecht. More often the mere threat to create peers on a large scale has sufficed to overcome the opposition, as in 1832 when the Reform Bill was pending and in 1911 when the Parliament Bill was under debate.

<sup>2</sup> On the “honors” investigation of 1922, prompted by the charge that peerages and other honors were being handed out in excessive numbers and for dubious reasons, see F. A. Ogg, *English Government and Politics*, 323-325.

<sup>3</sup> On the development and status of the peerage, see W. R. Anson, *Law and Custom of the Constitution* (5th ed.), I, 200-241. A complete classified list of peers as it stood a short time ago will be found in *Whitaker's Almanack* (1934), 193-212.

A third group of members consists of the representative peers of Scotland. The Act of Union of 1707 made no provision for recruiting the old separate peerage of Scotland, and as a result the number of Scottish peers has dwindled from 154 to 32. Peerages have, of course, become extinct through the failure of heirs; and in numerous instances a peer of Scotland has been honored with a peerage of Great Britain or (since 1800) of the United Kingdom. The incumbent, in the latter case, ceases to be reckoned as a member of the Scottish peerage, and of course acquires a seat in the House of Lords in his own right. Of the surviving Scottish peers, not all have seats in Westminster, but only 16 of their number chosen at the beginning of each parliament by the entire group, meeting as an electoral body in Holyrood Palace at Edinburgh.

3. Representative peers of Scotland

A fourth group of members is the Irish representative peers. When the Act of Union of 1801 was passed, the Irish peerage was a large body, and the measure provided, first, that thereafter—until the number should have been reduced from the existing 234 to 100<sup>1</sup>—the crown should create only one such peerage for every three that became extinct, and, second, that the Irish peerage should be represented in the House of Lords by 28 of their number, elected for life by the peerage itself. Many former Irish peers have received peerages of Great Britain or the United Kingdom, and have seats at Westminster by reason of that fact; and of course it is those who are still only Irish peers—54 in number—that choose the group which sits in a representative capacity. The settlement under which the Irish Free State was established in 1922, however, contains nothing on the subject, and, no elections having taken place since that date, the actual number of Irish representative peers has fallen to 18. Unlike Scottish peers, Irish peers, if not elected to the House of Lords, may stand for election to the House of Commons, although they cannot represent Irish constituencies.<sup>2</sup>

4. Irish representative peers

A fifth group of members is made up of the lords of appeal in ordinary, who differ from other peers in that their seats are not hereditary. One of the functions of the House of Lords is to serve as a final court of appeal from the lower courts in England,

5. Lords of appeal in ordinary

<sup>1</sup> This lower figure was reached in 1921.

<sup>2</sup> Lord Palmerston, for example, was an Irish peer, but sat in the House of Commons.

Scotland, and Northern Ireland. It is, therefore, desirable that the body shall contain at least a few able jurists who will actually give their time to the work of the House, and, further, that business of a judicial nature shall be transacted largely by this corps of experts. In 1856, the desire to strengthen the judicial element of the chamber precipitated a memorable controversy over the power of the crown to create life peerages. On the advice of her ministers, Queen Victoria conferred upon a distinguished judge, Sir James Parke, a patent as Baron Wensleydale for life. There were some precedents, but none later than the reign of Henry VI; and the House of Lords, maintaining that the right had lapsed and that the peerage had become entirely hereditary, refused to admit Baron Wensleydale until his patent was so modified as to put his peerage upon that basis. Twenty years later, however, an Appellate Jurisdiction Act authorized the appointment of two (afterwards increased to four, later to six, and eventually to seven) "lords of appeal in ordinary" with the title of baron; and legislation of 1887 made the tenure of these members, previously limited to the duration of their exercise of judicial functions, perpetual for life.

6. Ecclesiastical members

Finally, there are the ecclesiastical members—not peers, but "lords spiritual." In the fifteenth century, the lords spiritual outnumbered the lords temporal. Upon the dissolution of the monasteries, however, in the reign of Henry VIII, the abbots dropped out, and the spiritual contingent fell into a minority. Nowadays it is numerically insignificant, being restricted, as a result of a variety of statutes, to 26. Scotland, whose established church is Presbyterian, has no ecclesiastical members. Under the Act of Union of 1801 Ireland had four, but since the disestablishment of the Anglican Church in that island in 1869 it has had none. From the date mentioned to 1920, England and Wales shared the 26 clerical seats. Upon the disestablishment of the Anglican Church in Wales and Monmouthshire in the last-mentioned year, however, the four bishops from that section who were then sitting were withdrawn, leaving the ecclesiastical quota purely English; and such it remains today. By statute, the archbishops of Canterbury and York and three of the bishops, namely, those of London, Durham, and Winchester, are always entitled to writs of summons. This leaves 21 seats for the remaining 28 bishops, who receive writs of summons in the order of the length

of time they have been in charge of sees. When a sitting bishop dies or resigns, the one next on the list, in the order of seniority, becomes entitled to a writ, and the others advance a step nearer the goal. Once in possession of a seat, a bishop or archbishop retains it as long as he holds a see. But of course he does not transmit it to his heirs, nor (save in the case of the five mentioned above) to his successor in office.<sup>1</sup>

A legislative body constructed on the lines indicated could hardly fail to be dignified and impressive; and the rôle played by the House of Lords throughout hundreds of years of English history has been alike honorable and influential. As already indicated, however, the second chamber has in later days fallen into a position which makes of it a major national problem; and the remainder of the present chapter must be devoted to pointing out how this situation arose, how the matter has thus far been dealt with, and what issues are involved in the question as it still looms ahead. The subject is the more deserving of attention for the reason that many states besides Britain have second-chamber problems: whether there shall be a second chamber at all, and if so, how it shall be composed, what shall be its powers, and how it shall be geared up with the other parts of the government. Hungary and Japan have somewhat reconstructed their upper houses; Italy has practically abandoned hers, and Spain has done so entirely; the Canadian Senate is under attack, on lines reminiscent of the movement in Britain itself since 1909;<sup>2</sup> France, Australia, and other states find their upper houses provocative of numerous reform proposals; the Irish Free State is advancing from one experiment to another; even the United States is not without its problems relating to the Senate and senatorial procedure.<sup>3</sup>

Dissatisfaction with the British House of Lords as a supreme court of appeal was largely removed by the creation of the group of law lords in the later nineteenth century. But criticism of it

The second chamber a problem in Britain and elsewhere

Main grounds of dissatisfaction with the House of Lords

<sup>1</sup> On the composition of the House of Lords in general, see A. L. Lowell, *op. cit.*, I, Chap. xxi; W. R. Anson, *Law and Custom of the Constitution* (5th ed.), I, Chap. v; S. Low, *Governance of England*, Chap. xii. The subject is treated in greater detail in L. O. Pike, *Constitutional History of the House of Lords* (London, 1894), especially Chap. xv.

<sup>2</sup> R. A. Mackay, *The Unreformed Senate of Canada* (Oxford, 1926), especially Chap. xi.

<sup>3</sup> L. Rogers, *The American Senate* (New York, 1926).

as a legislative body, starting something like a hundred years ago, and swelling to a mighty protest in the early years of the present century, has never been allayed more than momentarily. The indictment runs on three lines chiefly. One is the predominantly hereditary character of the membership; with over 90 per cent of those who take the oath sitting solely by hereditary right, the body seems hopelessly out of keeping with the democratic basis on which British government is now supposed to be conducted.<sup>1</sup> A second is the palpable fact that certain groups and interests, *e.g.*, the landholders and the liquor trade, are over-represented while others of major importance, including the middle and lower classes generally, are not represented at all. A third is the circumstance that the House as a whole is irrevocably wedded to the principles and policies of a single political party, *i.e.*, Conservative, notwithstanding that this party normally commands the allegiance of decidedly less than half of the electorate. Other grounds of dissatisfaction exist of course—for example, the casual manner in which numerous members take their legislative duties. But the weightiest and most general complaints proceed from the three aspects mentioned.

Why are these matters any more a source of criticism, dispute, and protest today than in the times of Walpole and the Pitts? The answer is two-fold: *first*, that to some extent they represent conditions that had not arisen at this earlier period (for example, the monopoly of control enjoyed by a single party), and, second, that in the interval the country has experienced profound democratizing changes in political opinion and machinery without any corresponding shift of base on the part of the upper chamber.

Failure of the House of Lords to keep pace with the rest of the government

Consider what has happened. A century ago the government could only by courtesy be termed popular; certainly it was not democratic under any present-day definition of the word. The House of Commons was, of course, the most "popular" part of it. Yet, as we have seen, that body was hardly more representative of the general mass of the people than was the House of Lords itself. The two houses alike—as was true also of the agencies of justice, administration, and local government—were largely in the hands of the landed aristocracy, and as a rule found little

<sup>1</sup> There are today no hereditary members in any other European parliamentary chamber. The Japanese House of Peers is partly hereditary, but not so largely as the British.

difficulty in working together harmoniously. The Reform Act of 1832, however, broadened the basis of the lower house by admitting important middle-class elements to representation, and the acts of 1867 and 1884 gave the parliamentary suffrage to the great majority of male inhabitants in both town and country. At the same time, the ripening of the cabinet system brought the working executive within the range of effective public control, through the intermediary of the democratized lower chamber. But the House of Lords underwent no such transformation. On the contrary, it remained, as it still is, an inherently conservative body, in the main representing, in a direct and effective way, the interests of landed property, instinctively hostile to changes which seemed to menace property and the established order, and identified with all of the forces that tended to perpetuate the aristocracy and the Anglican Church as pillars of the state. By simply standing still while other branches of the government underwent progressive popularization, the second chamber became, more and more, a political anachronism—an assembly of men who were lawmakers by the accident of birth, “lifting its ancient towers and battlements high and dry above the ever rising and roaring tide of democracy.”

This was a change that took place outside the walls of the historic chamber. But toward the close of the century another almost equally important development occurred inside. This was the conversion of what had been a bi-partisan body into a body composed, to all intents and purposes, of men of a single party. If any particular date is to be mentioned in connection with this shift, it would be 1886, the year in which the Liberal party split asunder on Gladstone's first home rule bill; for the upshot of that schism was the secession from the Liberal party of almost all of the members of rank and position, naturally including most of those who sat in the hereditary chamber. Down to that time, both of the leading parties had been well represented in the chamber's membership. The Conservatives had been more numerous as a rule, but not greatly so. When a Conservative ministry was in office, it naturally found no difficulty in obtaining the assent of the Lords for its measures; and when the Liberals were in power, they could usually shape their program in such a way as to achieve their major purposes. After 1886, however, a different situation obtained. The upper house

The party aspect



became, and remained, overwhelmingly Conservative; in a total membership, in 1905, of over 600, there were exactly 45 Liberals, and even in 1914, after Liberal ministries had been securing peerages for their supporters for upwards of a decade, there were only 116. This meant that any Liberal government had from the outset to reckon with an almost solidly hostile upper chamber, without whose assent, however, it could not (before 1911) place any of its measures on the statute book. The Parliament Act of the year mentioned (to be described presently) improved the situation somewhat, but by no means solved the problem. And it goes without saying that the position of a Labor government has been, and still would be, even more unsatisfactory, because, whereas the Liberals always have an appreciable number of members in the second chamber, Labor has, and doubtless will continue to have, the merest handful.<sup>1</sup>

The Liberal  
policy of  
curbing the  
powers of the  
Lords

Down to around 25 years ago, people who talked about "reforming the Lords" were apt to be thinking only of improvements that might be made in the membership of the body. Most often it was suggested that inactive or unworthy hereditary peers be excluded, and that a sizable quota of life peers be substituted, to be drawn from men of attainment in law, diplomacy, and other professions and arts. Resolutions or bills looking to these ends--sponsored in several instances by members of the second chamber itself--made their appearance as early as 1869. No action, however, resulted; and after the body became practically a one-party affair, interest gradually shifted to the question of curbing the chamber's power to veto measures which the ministers and popular branch wanted translated into law. Naturally, it was the Liberals who brought this newer proposal to the fore. Many Conservatives would have been entirely willing to see the make-up of the chamber overhauled; but for obvious reasons they had no interest in seeing its powers reduced. The Liberals, on the other hand--while also favoring a reconstruction of membership--were chiefly concerned about the matter of powers. Gladstone's government of 1893 failed in its larger objectives because of the Lords' veto; and the Campbell-Bannerman ministry of 1905, although supported by the largest majority

<sup>1</sup> Of members with definitely known party affiliations in 1932, more than 500 were Conservatives, 84 were Liberals, and 13 were Laborites.

that any party had ever possessed in the House of Commons, promptly came up against the same disheartening obstacle.<sup>1</sup>

The question  
of reform in  
1909-11

The upshot was that when, in 1909, the Lords made bold to reject the annual Finance Bill because of increased taxation which it imposed on land and other forms of wealth, the Liberal government of Mr. Asquith—after appealing to the country and winning a sufficient victory to cause the upper house to give way and allow the new taxes to become law—staked its very existence upon an immediate and drastic reduction of second-chamber powers. Leading peers sought to placate the embittered Liberals with proposals for reconstruction of membership, but the ministers refused to be diverted from their plan; and the outcome justified their stand, although not until after the country had seen exciting times. Following a second general election in 1910, turning almost entirely on the second-chamber issue, the government's Parliament Bill finally surmounted the one serious hurdle in its pathway, *i.e.*, the hostility of the House of Lords, in the summer of 1911.

The triumphant Liberals had by no means thrown overboard the idea of reconstructing the upper chamber on more democratic lines, and in its preamble the Parliament Act promised supplementary legislation to this end. The present measure, however, dealt rather with the matter of powers, its general object being to provide ways by which finance bills could quickly, and other bills eventually, be made law whether the House of Lords concurred in them or not. These arrangements might or might not be preserved after the chamber should have been reconstituted; but until then, at all events, they were to make impossible the recurrence of anything like the happenings of 1909. As to finance measures, the act reads as follows: "If a money bill, having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is sent up to that house, the bill shall, unless the House of Commons direct to the contrary, be presented to His Majesty and become an act of Parliament on the royal assent being signified, notwithstanding that the House

The Parlia-  
ment Act:

1. Money  
bills

<sup>1</sup> The relations of the two branches of Parliament through a hundred years are sketched in E. Allyn, *Lords versus Commons; A Century of Conflict and Compromise, 1830-1930* (New York, 1930).

of Lords have not assented to the bill." The term "money bill" is so defined as to include measures relating not only to taxation but also to appropriations, loans, and audits; and power to decide whether a given measure is or is not a money bill, within the meaning of the act, is given to the speaker of the House of Commons, with no appeal from his decision.

**Other bills** This was as far as the events of 1909-10 alone would have required the authors of the measure to go. But the Liberals and their allies had hardly less prominently in mind the defeat of Gladstone's home rule bill of 1893, of the plural voting bill of 1906, and of other largely or wholly non-financial measures; and accordingly the second major provision became this: that any other public bill (except a bill to confirm a provisional order or to extend the maximum duration of Parliament beyond the period fixed by law) which is passed by the House of Commons in three successive sessions, whether or not of the same parliament, and which, having been sent up to the House of Lords at least one month, in each case, before the close of the session, is rejected by that chamber in each of those sessions, shall, unless the House of Commons direct to the contrary, become an act of Parliament on the royal assent being signified thereto, notwithstanding the fact that the House of Lords has not consented to the bill. It is required that at least two years shall have elapsed between the date of the second reading of such a bill (*i.e.*, the first real opportunity for discussion of it) in the first of these sessions of the House of Commons and the final passage of the bill in the third of the sessions. To come within the provisions of the act the measure, furthermore, must be, at its initial and its final appearances, the "same bill"; that is, it must contain no alterations save such as are made necessary by the lapse of time.

**3. Shortened  
life of a par-  
liament**

Incorporated in the act was one important provision not connected directly with the subject in hand, but germane in the sense that it was aimed at bringing Parliament and its work into closer relation with public opinion, namely, that the maximum life of a parliament should thenceforth be five years, instead of seven as during the period since 1716.

**Significance  
of the act**

By bringing to an end the parity of power which, in theory and in law if not always in practice, the House of Lords had enjoyed through the centuries, the Parliament Act accomplished one of the greatest changes in the British constitution ever de-

liberately made, incidentally affording at the same time a striking illustration of the tendency to enlargement of the written, at the expense of the unwritten and conventional, parts of that great plan of government. As for the upper chamber, it has, of course, never been the same since. Its judicial powers are untouched; and in the domain of legislation it still enjoys much influence, and even authority. No project of financial or other legislation can be put on the statute book without being submitted to it, and there is nothing except custom and convenience to prevent even the most important of non-financial measures from making their appearance first upon its calendar. A single, bare presentation, however, of any money bill fulfills all legal requirements and ensures that such a measure (having, of course, already passed the House of Commons) will become law. The upper house is allowed one month in which to approve or reject; but, so far as the fate of the bill is concerned, the result is the same whatever it does.

In respect to non-financial bills, the second chamber still has a veto. This check, however, is only suspensive, not absolute.✓ The terms required for placing such measures on the statute book without the Lords' assent are admittedly not easy to meet; and it is interesting to observe that in all the 23 years from the passage of the act to the date of writing, not a single measure—financial or otherwise—has become effective without the upper chamber's consent. One should hasten to add, however, that apparently only the intervention of the World War prevented the thing from happening a number of times. The procedure contemplated in the act was invoked in the case of the Irish home rule bill of 1913, a plural voting bill of the same year, and a bill disestablishing and disendowing the Anglican Church in Wales in 1914; and while it is true that the first of these measures, though placed on the statute book, never went into operation,<sup>1</sup> that the second did not become law, and that the third was, in substance, finally assented to by the Lords after the war, the history of the bills shows that the procedure laid down in the legislation of 1911 is by no means unworkable. By repeatedly rejecting a proffered measure, the Lords may, it is true, rouse public sentiment against it or otherwise so influence the attitude of members of the popular branch as to cause the project either

<sup>1</sup> See pp. 412-413 below.

to be given up or to be defeated at a later test; and this is the more possible since a minimum period of two years is required to elapse before a non-financial measure can be carried over the Lords' veto. All possible allowance being made, however, on these scores, it is nowadays not only legally but actually possible for legislation of every description (with the slight exceptions mentioned above) to be enacted without the Lords' assent. Truly, the second chamber has become secondary.<sup>1</sup>

The "Bryce  
Report"  
(1918)

The Parliament Act announced the intention of its authors to "substitute for the House of Lords as it at present exists a second chamber constituted on a popular instead of an hereditary basis." If this part of the program has never been carried out, it is not because of any lack of proposals and plans. Chief among these is a project brought forward in 1918 by an able and broadly representative parliamentary commission—the Conference on the Reform of the Second Chamber—presided over by the astute Lord Bryce. Starting with the premise that any reformed House of Lords ought to have some continuity with the present body, the Conference urged that the new chamber should nevertheless "have popular authority behind it," should be freely accessible "to the whole of His Majesty's subjects," should be "responsive to the thoughts and sentiments of the people," and should be so constituted that no one set of political opinions would be likely to have "a marked and permanent predominance" in it. Various methods of making up a second chamber that would meet these requirements were considered and rejected: nomination by the sovereign on advice of the ministers, election by the House of Commons, election by county and borough councils, direct election by the people. The plan finally proposed was, in brief, that the total number of members should be reduced to 327, of whom 81 should be chosen from the whole body of peers by a standing joint committee of the two houses, and the remaining 246 should be chosen, in appropriate quotas, by 13 electoral colleges, each consisting of the members of the House of Commons

<sup>1</sup> The political history lying immediately back of the Parliament Act is well presented in A. L. P. Dennis, "Impressions of British Party Politics, 1900-1911," *Amer. Polit. Sci. Rev.*, Nov., 1911, and good analyses of the measure and its significance are to be found in A. L. Lowell, *Government of England* (rev. ed., New York, 1912), I, Chap. xxiiiA, and A. L. P. Dennis, "The Parliament Act of 1911," *Amer. Polit. Sci. Rev.*, May, Aug., 1912.

sitting for the constituencies contained in one of the 13 districts or areas into which the country was to be divided for the purpose. All members were to be elected for twelve-year terms (one-third of each of the two groups retiring every four years); and for election to the second group, qualifications were to be substantially the same as for members of the House of Commons.

As to functions, the Conference was agreed that the reconstituted second chamber ought not to have equal powers with the House of Commons, nor aim at becoming a rival of that body, and that, in particular, it ought not to have the power of making and overturning ministries or of vetoing money bills. Nevertheless, some betterment of the legislative position assigned in the Parliament Act of 1911 was provided for by (1) a proposal that when there should be doubt whether a measure was to be regarded as a money bill the question should be settled, not by the speaker of the House of Commons, as now, but by a joint committee on financial bills, consisting of seven members elected by each house for the duration of a parliament, and (2) a plan for reference of a bill on which the houses could not agree to a free "conference," sitting privately, and consisting of (a) 20 members of each house appointed at the beginning of a parliament by the Committee of Selection of each house and (b) 10 members of each house added by the Committee of Selection on the occasion of the reference of any particular bill. This latter feature was adopted in preference to such alternatives as joint sessions of the two houses and resort to popular referenda.<sup>1</sup>

The scheme as a whole was too much of a compromise to please either conservatives or progressives, and it never received the attention that it deserved. The coalition government of Mr. Lloyd George did, indeed, proceed so far in 1922 as to submit to the House of Lords five resolutions embodying several features of the "Bryce plan." But little interest was aroused, and the proposals were pigeonholed. Assuming that sooner or later something would have to be done, and preferring that

No action  
results

<sup>1</sup> *Report of the Conference on the Reform of the Second Chamber*, Cmd. 9038 (1918), reprinted in H. L. McBain and L. Rogers, *New Constitutions of Europe*, 576-601. On the work of the Conference, see H. B. Lees-Smith, *Second Chambers in Theory and Practice* (London, 1923), Chap. xi. G. B. Roberts, *The Functions of an English Second Chamber*, is largely a discussion of the Conference's conclusions, particularly as to the uses which a second chamber, under British conditions, ought to serve.

action be taken at a time when the friends of the second chamber held the whip-hand, the Baldwin government of 1924-29 promised that the problem would be dealt with during the life of the then existing parliament. The subject, however, was full of dynamite; the nation was not wrought up over it; and the years slipped by with nothing done—beyond perfunctory introduction of new resolutions, and equally perfunctory debate. Labor, when in office in 1924, had not dared take up the problem. Again in 1929-31 it held back; the matter was deemed as important as ever, yet not of such urgency as to warrant running the risk of wrecking the government. The “national” ministry of Mr. MacDonald dating from 1931 was, in its turn, wholly preoccupied with other things. Meanwhile, however, the rise of Labor to a position of parity with the older parties, and the chance that the party might presently find itself in possession of an independent majority in the House of Commons, had given the problem a new significance and a new slant. What would happen if a party which held that the House of Lords ought to be abolished outright ever obtained full power and chose to turn it against the second chamber? Manifestly, that might mean the end. Even short of that, a Socialist House of Commons might doubtless would—take advantage of the terms of the Parliament Act to place on the statute book measure after measure, on taxation, nationalization, and other matters, which the propertied and conservative classes would regard as calamitous. Small wonder, therefore, that as early as 1922 Conservatives were found insisting that bills altering the constitution and powers of the second chamber be explicitly exempted from the operation of that clause of the Parliament Act which enables general legislation to be enacted without the Lords’ assent! Small wonder, too, that in later years their objective came to be nothing less than the repeal of the Parliament Act itself!

Present  
party atti-  
tudes

Of late, the problem has been in abeyance. But it is always in the background of the political scene and liable to thrust itself into renewed prominence, or even preëminence. John Bright’s observation that “a hereditary House of Lords is not and cannot be perpetual in a free country” is plausible, and one would hardly be accused of rashness if he predicted significant changes within a measurable future—as soon, at all events, as

Labor can count a clear majority in the popular chamber. Save for the complicating question of powers, the membership problem would quite possibly have been settled before now. Speaking broadly, all Englishmen agree that some modifications are desirable, even though at the date of writing few people are excited about the matter. The question is, What modifications? Again, speaking broadly, Labor says: "Abolish the second chamber altogether; any second chamber would be a reactionary body, and what is needed is merely improvement of the House of Commons by bringing it more closely in touch with the people." Liberalism (what remains of it) says: "Reform the membership, but keep the chamber weak, chiefly by continuing the restrictions imposed by the Parliament Act." Conservatism says: "Reform the membership if you please, but give back the powers taken away in 1911."

The most fundamental question of all is, of course, whether to have any second chamber whatever. This would seem a curious issue for Britain, the mother of bicameral parliaments, to raise; and, in point of fact, from the time when Englishmen found in Cromwell's day that, after all, notwithstanding an impetuous decision to the contrary, they wanted a parliament of two houses, it was not often raised until the Labor party came by the idea, some twenty years ago, that the House of Lords is so hopelessly out of keeping with democratic government that it ought to be suppressed root and branch.<sup>1</sup> Even though on record since 1918 as opposed not only to the continuance of the House of Lords as we know it, but to the maintenance of any second chamber at all (even an elective one), Labor may find it unwise to persist in its idea;<sup>2</sup> and so far as general opinion

The uses of a second chamber

<sup>1</sup> More than a hundred years ago, however, Jeremy Bentham argued powerfully against second chambers. See L. Rockow, "Bentham on the Theory of Second Chambers," *Amer. Polit. Sci. Rev.*, Aug., 1928. Half a century later, John Stuart Mill declared it a matter of "secondary importance" whether a parliament consists of two chambers or one. *Representative Government*, Chap. viii.

<sup>2</sup> There is already, indeed, difference of opinion in the party. In their challenging *Constitution for a Socialist Commonwealth of Great Britain*, Sidney and Beatrice Webb say categorically: "There is, of course, in the Socialist Commonwealth, no place for the House of Lords, which will simply cease to exist as a part of the Legislature" (p. 110). But in J. H. Thomas' *When Labour Rules* (London, 1920), and in Fabian Tract No. 183 (reprinted from the Socialist weekly, *The New Statesman*), one finds arguments for an elected second chamber. Indeed, in *Labour and the Nation*, embracing the official program of the party as approved in 1928, the House of Lords is not mentioned, and it is asserted merely that the party stands for "the



outside that party can be ascertained, it is undoubtedly favorable to a second chamber. The Conference of 1917-18 was unanimously of the opinion that a reconstructed House of Lords is an indispensable part of the constitutional system, and its statement of the four uses to be served by such a body may be taken as expressing the best opinion of Englishmen generally on the subject. They are as follows:

"1. The examination and revision of bills brought from the House of Commons, a function which has become more needed since, on many occasions, during the last thirty years, the House of Commons has been obliged to act under special rules limiting debate.

"2. The initiation of bills dealing with subjects of a practically non-controversial character which may have an easier passage through the House of Commons if they have been fully discussed and put into a well-considered shape before being submitted to it.

"3. The interposition of so much delay (and no more) in the passing of a bill into a law as may be needed to enable the opinion of the nation to be adequately expressed upon it. This would be especially needed as regards bills which affect the fundamentals of the constitution or introduce new principles of legislation, or raise issues whereon the opinion of the country may appear to be almost equally divided.

"4. Full and free discussion of large and important questions, such as those of foreign policy, at moments when the House of Commons may happen to be so much occupied that it cannot find sufficient time for them. Such discussions may often be all the more useful if conducted in an assembly whose debates and divisions do not involve the fate of the executive government." <sup>1</sup>

maintenance of the unquestioned supremacy of the House of Commons," and that it is prepared to offer "uncompromising resistance to the establishment of a second chamber with authority over finance and power to hamper the House of Commons and defeat democratic decisions."

<sup>1</sup> *Report of the Conference on the Reform of the Second Chamber*, 4. Classic discussions of the uses of a second chamber include J. S. Mill, *Representative Government* (London, 1860), Chap. xiii, entitled "Of a Second Chamber," and John Adams, *Defence of the Constitutions of Government of the United States of America* (Boston, 1787). The latter work will be found in C. F. Adams (ed.), *Works of John Adams* (Boston, 1851), IV, 270-588. The relative advantages of unicameral and bicameral systems are set forth succinctly in J. W. Garner, *Political Science and Government*, 600-613. The subject is discussed with special reference to Britain in H. J. Laski, *The Problem of a Second Chamber* (Fabian Tract No. 213, London, 1925), and G. B. Roberts, *The Functions of an English Second Chamber* (London, 1926), Chap. ii. In the one case the conclusion is unfavorable, and in the other favorable, to a second chamber. Cf. R. Muir, *How Britain Is Governed*, Chap. vii. The most noteworthy of modern English believers in a single-chamber plan was Jeremy Bentham, who gave vent to his views in a tract published in 1830 under the title of *Jeremy Bentham to His Fellow-Citizens of France on Houses of Peers and Senates*.

All of these functions are real and important, even though one or two of them could conceivably be discharged by some agency other than a second chamber; and it is interesting to note that the Webbs, while giving the House of Lords no place in their ideal constitution, nevertheless seek to make some provision for the function of revision and for temporary suspension of legislation that may have been enacted too hastily. Indeed, on the ground that Britain has none of the safeguards afforded by a rigid constitution, by referendum procedure like that of Switzerland, or by judicial review like that in the United States, it is sometimes contended that she, beyond most other states, has need of a second chamber with full deliberative and revisory powers.

It is easy to make cynical or witty remarks at the expense of the House of Lords as it now stands. One recalls the *mot* of a former Liberal leader to the effect that the House "represents nobody but itself, and enjoys the full confidence of its constituents." Fair-minded persons are prepared to admit, however, that a good deal can also be said to the chamber's credit. Its roll is undeniably crowded with the names of members who lack both ability and interest. But neither the House of Commons nor any other legislative body is composed entirely, or perhaps even mainly, of men who are all that could be desired; and in the case of the House of Lords the unfit rarely darken the doors of the chamber, or, if present, take any active part. The work of the House is done very largely by men who have genuine ability, interest, and experience; and of these there are, fortunately, many. Not all of the fittest do, or can, participate regularly. Some, after elevation to or inheritance of a peerage, very naturally and properly go on with their professional, scholarly, or business careers. After all, it must be remembered that for most of them membership is an involuntary matter, which cannot always be accepted as transcending other obligations already incurred. But it is doubtful whether, by and large, the actual working House of Lords is surpassed in its resources of intelligence, integrity, and public spirit by the House of Commons. Industry, finance, agriculture, science, literature, religion—all are represented there. Spiritual and intellectual, as well as material, forces find expression. The country is served from the red leather benches by men who have built up its

Much to be  
said in the  
House of  
Lords de-  
fense

prosperity, administered its great dependencies, risen to its highest positions in law, diplomacy, war, statecraft, and learning. The fact is not to be overlooked, furthermore, that many of the more active members have in their earlier days had the advantage of long service in the House of Commons—that, indeed, the popular branch is in a very real sense a nursery of the House of Lords.<sup>1</sup> No student of English history needs to be told that upon a good many occasions the upper house has interpreted the will of the nation, or the actualities of a political situation, more correctly than the lower, and that more than once it has saved the country from hasty and ill-considered legislation.<sup>2</sup> It is not altogether the sort of a second chamber that Englishmen would construct today if they were confronted with the necessity of creating one *de novo*. But since it exists, and is so deeply woven into the texture of the national life, the proper procedure would seem to be simply to reconstruct it on lines of the best twentieth-century thought. Certainly that would be most in keeping with the historic method of English political development.

How the  
House might  
be reconsti-  
tuted

So far as membership goes, the most reasonable program of reform would appear to be (1) adoption of the principle, first suggested by Lord Rosebery, that the possession of a peerage shall not of itself entitle the possessor to sit,<sup>3</sup> (2) admission to membership of a considerable number of persons representative of, and selected by, the whole number of hereditary peers, and (3) the introduction of a substantial quota of life or fixed-term members, appointed or selected for their legal attainments, political experience, and other qualities of fitness and eminence.

<sup>1</sup> About one fourth of the present members of the House of Lords have at some time had seats in the other house. A member of the House of Commons recorded in 1857 the fact, "not unimportant to constitutional history," as he truly said, that, going over to the Lords from the Commons one evening, he observed that every one of the 30 peers then present had sat with him in the popular chamber.

<sup>2</sup> It may do this by a veto, which even under the Parliament Act may, to all intents and purposes, be final. Or it may put the ministry in a position where the natural thing to do is to take the measure to the country at a general election, in which case the chamber is practically calling into play the principle of referendum, as it so clearly did in 1900. Lord Salisbury used to say that the power to refer questions of importance to the electorate is the primary *raison d'être* of the House of Lords; and both in the discussions of 1900-11 and in those of later days much was made of this idea by Conservative defenders of the chamber.

<sup>3</sup> This principle already operates in respect to the Scottish and Irish peers. It ought not to be impossible to extend it to the entire peerage.

A body so constituted would still incline to conservatism; probably it would contain a Conservative majority, in the party sense, a good deal of the time. But a Liberal, Labor, or other non-Conservative government would hardly again find itself in the embarrassing position of Liberalism in pre-war days or of Labor in more recent ones. The chief difficulty would be to hit upon a satisfactory way of selecting the life or fixed-term members. In a country organized on a federal basis, as, for example, the United States, it is easy to make up a second chamber that will not be a duplicate of the first; the people in small local groups can be represented directly in the lower house and the larger federated units or areas, as such, in the upper. Britain is not a federal state; at all events, so far as England is concerned, no obvious areas for upper chamber representation exist. Still, as was the opinion of the Bryce Commission, it is not inconceivable that they might be created; indeed, that body considered that the old historic counties, or combinations of them, could be made to serve. Great advantages would arise, also, from a system under which a considerable number of members should be chosen to represent important special groups or interests, including the great professions. Landowners, churches, universities, scientific bodies, chambers of commerce, legal and medical associations, and trade unions come readily to mind in this connection.<sup>1</sup>

A second chamber made up on these lines would undoubtedly be respectable, capable, and vigorous; and this raises a further question, of which students of the subject have not been unmindful. Would not such an upper chamber justly claim equality of rights and powers with the popular house? Could it be kept on the subordinate plane to which the legislation of 1911 has lowered the House of Lords, or would it be necessary to repeal the Parliament Act and go back to the old plan of two strong and coördinate branches, such as prevails in France and the

Would such a second chamber make trouble?

<sup>1</sup> In 1932, a Conservative joint committee of peers and members of the House of Commons, presided over by the Marquess of Salisbury, prepared and reported a plan under which a reformed second chamber should consist of (1) princes of the royal blood, (2) two archbishops and three bishops, (3) 150 hereditary peers chosen by the entire peerage, and (4) 150 other persons chosen throughout the country by the county councils. See W. A. Rudlin, "Report on House of Lords Reform in Great Britain," *Amer. Polit. Sci. Rev.*, Apr., 1933. A bill on these lines was introduced in the House of Lords by Lord Salisbury in December, 1933.

United States? Some years ago, the late Lord Balfour, in a notable address, warned the lower chamber that a revamped House of Lords could not fail to mean an impairment of the ascendancy which the House of Commons has gained. The Bryce Commission evidently feared something of the sort, and other voices have been raised, in all of the great parties, to the same effect. It is mainly apprehension on this score that has led Labor to urge, not that the chamber be merely reconstructed, but that it be abolished, thereby disposing at a stroke of all the problems that bicameralism, in the present form or any other, is capable of producing.

#### Safeguards

Two things are, however, to be said. In the first place, other countries, *e.g.*, Czechoslovakia, have found it possible to reconcile able and useful second chambers with a heavy preponderance of power in the first and more distinctly popular chamber. This they have done by carefully drawn constitutional provisions, such as ought not to be beyond the ingenuity of British statescraft. In the second place, experience shows that in the long run an upper chamber, no matter what its basis, cannot maintain a parity of power and influence with the lower chamber under a system of responsible, *i.e.*, cabinet, government. The constitution of France purports to make the cabinet responsible to both the Senate and the Chamber of Deputies, and the Senate is an exceptionally capable and energetic body. Nevertheless the Chamber of Deputies enjoys a substantial pre-eminence in the actual control of national affairs. The framers of the Australian constitution deliberately provided for a popularly elected upper house, with a view to making it an effective counterpoise to the federal House of Representatives. But the idea failed. Today a Commonwealth government recognizes the supremacy of the lower chamber only, and the Senate can fairly be characterized as hardly more than a debating society. In Canada, likewise, the Senate—composed of life members appointed by the governor-general on advice of the ministers—is notoriously weak. The outcome could hardly be otherwise in Britain. It will not do to say with a recent writer that the cabinet system “is fatal to a bicameral legislature.” As is proved by France, there is a legitimate and useful place for a second chamber in a cabinet system of government. But it cannot be denied that, as the same writer goes on to say, “whatever the

mode of selection or however able its personnel, the upper chamber will continue to play but a subordinate position in political life so long as the principle of the responsibility of the ministry to the House of Commons endures."<sup>1</sup>

The point that must not be overlooked is that a subordinate position may at the same time be a highly honorable and useful position; and it stands to reason that if a second chamber is to be retained at all, it ought to be made up in such a manner as to bring into it the greatest possible amount of industry and talent. The uses of a second chamber are to interpose criticism and compel deliberateness; to make it more difficult for a legislature to be swept off its feet by a wave of passion or excitement; "to serve as an organ of revision, a check upon democracy, an instrument by which conservatism in action may be had, and a means for securing a representation of interests that is not feasible in a single chamber composed of members elected directly by the people."<sup>2</sup> The object is not mere obstruction, flowing from inertia, incapacity, or partisanship. It is, instead, serious-minded criticism, deliberation, and revision, with a view to the general welfare rather than to class interest or partisan expediency. Properly discharged, the function of revision is no less exacting, and hardly less important, than that of initiation, or even that of final decision. The House of Lords has served the British nation well in the past. It may, of course, presently be thrown into the discard. Wisely reconstructed, it should, however, be capable of still greater usefulness in the years that lie ahead.<sup>3</sup>

Capacity desirable even in a "secondary" chamber

<sup>1</sup> C. D. Allin, "The Position of Parliament," *Polit. Sci. Quar.*, June, 1914, 242-243.

<sup>2</sup> W. F. Willoughby, *Government of Modern States*, 318.

<sup>3</sup> Features and problems of the British second chamber are considered in comparison with those of foreign second chambers in several works already mentioned: H. W. V. Temperley, *Senates and Upper Chambers*; J. A. R. Marriott, *Second Chambers* (new ed., Oxford, 1917); G. B. Roberts, *The Functions of an English Second Chamber*; and H. B. Lees-Smith, *Second Chambers in Theory and Practice*. H. L. McBain and L. Rogers, *New Constitutions of Europe*, Chap. iii, is suggestive, as are also various articles in "The Second Chamber Problem; What the Experience of Other Countries Has to Teach Us," *New Statesman*, Feb. 7, 1914 (Supplement). Attention should be called also to R. A. MacKay, *The Unreformed Senate of Canada*, cited previously.

## CHAPTER XII

### PARLIAMENTARY MACHINERY AND PAGEANTRY

Parliament  
as a mechan-  
ism and a  
pageant

There was a time when the organization of the English Parliament could be described in few and simple words; indeed, if one goes back far enough in parliamentary history one finds hardly any organization at all. As centuries passed, however, and powers and functions multiplied, new and increasingly elaborate devices for guiding, regularizing, and expediting deliberation were brought into play, until nowadays equipment in the form of officers, clerks, committees, rules, calendars, records—to say nothing of unwritten habits and usages—makes up one of the most complicated and imposing mechanisms of legislative and related activity to be found on the globe. Parliament is, indeed, a vast, vibrant machine which enacts statutes, levies taxes, appropriates money, interrogates ministers, and decides policy under rules of procedure almost as exact, and sometimes nearly as rigid, as the laws governing the succession of the seasons. At the same time, it is not merely a mechanism, but also a pageant. Naturally enough, the constitutional lawyers who in the main have written the treatises and text-books on British government have portrayed it as chiefly a thing of rules, principles, and processes. This, however, is unfortunate, because Parliament is not only a legislative mill but a complex of human personalities. In the brief account of its organization and procedure to be given in the present chapter and the two that follow, these more human aspects, it is hoped, will not wholly fail to find their place in the picture.

Physical sur-  
roundings:

From the beginning of parliamentary history, the meeting place of the houses has commonly been Westminster, once a separate city on the left bank of the Thames, but now incorporated in Greater London. The last parliament to sit at any other spot was the third Oxford parliament of Charles II, in 1681. The Palace of Westminster was long the most important of the royal residences, and it was natural that its great halls and chambers, together with the adjacent abbey, should be utilized for parlia-

mentary sittings. Most of the old building was destroyed by fire in 1834, and the huge, yet pleasing, Tudor Gothic structure which nowadays is pointed out to the visitor, usually as "the Houses of Parliament," was erected in 1837-52. The Lords first occupied their present quarters in 1847 and the Commons theirs in 1850.

From opposite sides of a central hall corridors lead to the rooms in which the sittings of the houses are held, these rooms being so placed that, when their doors are open, the king's throne at the south end of the one is visible from the speaker's chair at the north end of the other. The rectangular hall occupied by the Commons is considerably smaller than one would expect, being, in fact, only about a quarter the size of the hall occupied by the American House of Representatives. It is, indeed, capable of seating only about half of the 615 members at any one time. Since it rarely or never happens, however, that all want to be in the chamber simultaneously, no great inconvenience results; and there is a decided gain in the matter of acoustics. The room is bisected by a broad aisle leading from the main entrance, at the farther end being "the table," used by the clerks and also as the resting place of the mace and of piles of books and papers, and beyond this the high canopied chair of the speaker. Facing the aisle on each side, five rows of high-backed benches, covered with dark green leather and running the length of the room, slope upward tier upon tier to the walls; and through them cuts, transversely from wall to wall, a narrow cross-passage known as the "gangway." A sliding brass rail which can be drawn across the main aisle near the entrance forms the "bar" of the House, at which offenders against the dignity and privileges of the chamber are sometimes required, and more favored persons sometimes invited, to appear. A deep gallery runs entirely round the room. The portion facing the speaker is set apart for visiting spectators. At the opposite end, the front rows are assigned to the press, those farther back being reserved for female onlookers. The side galleries, with space for about 100 persons, are held for the occupancy of members, but are rarely tenanted.

The front bench at the upper end of the aisle, at the right of the speaker, is known as the Treasury, or Ministerial, Bench, and, by custom, is occupied exclusively by those members of the House who belong to the ministry, or, at all events, such of the

1. House of Commons



more important ones as it can accommodate. The corresponding bench at the speaker's left is similarly reserved for the leaders of the opposition, and hence is known as the Front Opposition Bench; practically, those who occupy it do so because of having been invited by the official opposition leader to share it with him. The great bulk of members, having no claim to front-bench positions, range themselves, so far as their numbers permit, in squads behind their leaders, with a tendency for the less experienced ones, and also any of loose party connections, to content themselves with places "below the gangway." Groups belonging to minor parties, *e.g.*, the Irish Nationalists in earlier days, have also usually occupied seats in the same section. "It is a tradition of the House that the benches below the gangway can be counted upon to furnish trouble if a minister goes looking for it."<sup>1</sup> There is no definite assignment of seats to the general run of members, the only rule being that a member, having found a place that he likes, may reserve it for his own use—only for a single sitting, however—by depositing his hat in it, or under more recent informal agreement, his card. Except on unusual occasions, the visitor will not find more than one or two hundred persons on the benches, the more by reason of the fact that, there being no desks, the member who wants to write, or even to read or otherwise occupy himself, seeks the library or other rooms adjoining, whence he can readily come if summoned to a division.

## 2. House of Lords

Though relatively more commodious, because fewer members attend the sittings, the hall occupied by the Lords is even smaller than that used by the Commons. It is also more ornate. The speaker's chair is replaced by a crimson ottoman or lounge—the "woolsack"<sup>2</sup> on which (although it is technically outside of the chamber) the Lord Chancellor sits when presiding; and a gorgeous throne is provided for the sovereign's occupancy when he meets his faithful lords and commons at the opening of a parliament. Otherwise, the arrangements are much as in the House of Commons, with rows of red-upholstered benches facing each other on the two longer sides, no desks, a table in front of the woolsack, a bar, and galleries all the way round for the use of peeresses, the press, and miscellaneous visitors. Members who

<sup>1</sup> W. B. Munro, *The Governments of Europe* (rev. ed.), 213.

<sup>2</sup> In the days of Elizabeth the presiding official sat upon a sack actually filled with wool; hence the present name.

belong to the ministry occupy the front bench at the Lord Chancellor's right hand and leaders of the opposition the front bench at the left, while the remaining members sit wherever they like, though usually on the same side of the room as the leaders of their party. Some attention is paid to seating according to rank when the sovereign is present, but at other times the only group, aside from government and opposition leaders, that sits in a body in a fixed place is the ecclesiastical members, whose presence on the "episcopal bench" (really four benches to the right of the woolsack) is noticeable enough to the visitor by reason of their flowing black gowns and ample white lawn sleeves.<sup>1</sup>

So much for physical surroundings—which not only are picturesque but have large practical importance in helping make parliamentary methods and manners what they are.<sup>2</sup> How, in the next place, does Parliament meet and prepare itself for a session? How, also, does it disperse when a session comes to a close?

The matter of frequency of sessions has already been touched upon, and we have noted that, in point of fact, the two houses are in session considerably more than half of the time.<sup>3</sup> One aspect, however, which calls for special emphasis at this point is the promptness with which Parliament meets and begins work after a general election. There is no rule requiring the lapse of any definite period of time between the election of a new House of Commons and the assembling of Parliament, but it is the practice to make the interval as brief as possible, and it rarely exceeds two or two and one-half weeks. There is a very good reason for this. Under the British system, the ministers must at all times possess the confidence and support of a majority in the House of Commons. In order to determine whether they have

Prompt convening of Parliament after a general election

<sup>1</sup> The Parliament building and the rooms occupied by the two houses are described more fully in M. MacDonagh, *The Pageant of Parliament*, I, Chaps. vii, xx; II, Chap. v.

<sup>2</sup> "The accident," wrote an English master of parliamentary affairs half a generation ago, "that the House of Commons sits in a narrow room with benches facing each other, and not, like most Continental legislatures, in a semi-circular space, with seats arranged like those of a theater, makes for the two-party system and against groups shading into each other." C. Ilbert, *Parliament*, 124.

<sup>3</sup> They sit, with only brief adjournments over week-ends and holidays, from the end of January or the first part of February to late July or early August, and from the first week in November until near Christmas, of every year.

this support, it is necessary to call the House into session; any ministry continuing in office for a considerable length of time after election without summoning Parliament would be guilty of trying to rule without a mandate from the nation. The result is that a new House of Commons goes to work almost immediately after election, and certainly reflects—in so far as it is possible for any body so chosen to reflect—the sentiments and desires of the people at the moment.<sup>1</sup>

Adjourn-  
ment, proro-  
gation, and  
dissolution

Each house may adjourn at any time it chooses, without reference to the other; and neither can be adjourned by action of the crown. To adjourn means merely to interrupt the course of business temporarily, and matters which were pending are simply carried over without change of status. When, however, a session is to be brought to a close, the crown, *i.e.*, the sovereign acting on the advice of the ministers, must intervene. There must be a prorogation; and only the crown can prorogue. Prorogation both ends the session and terminates all pending business, so that a bill which has fallen short of enactment will have to start at the beginning again in the next session if it is to be kept alive. Both houses must be prorogued together, and to a definite date, although the opening of the new session may, in point of fact, be either postponed or advanced by later proclamation. Sometimes, too, a proclamation of dissolution is issued before the date arrives, which means that the old parliament will never meet again. Dissolution ends a parliament, though, as we have seen, it also sets in motion the machinery for electing a new one.

How a ses-  
sion is opened

The two houses must invariably be summoned to meet simultaneously, and at the opening of a session the members gather, first of all, in their respective chambers. Thereupon an official messenger of the House of Lords invites the commoners to present themselves at the bar of the upper house, where they (or such of them as can squeeze into the small enclosure) hear read

<sup>1</sup> Newly elected parliaments assemble promptly in all European countries; likewise in the British dominions. Formerly, the Congress of the United States, elected in November, did not begin its term until the following March 4, and in many instances did not meet until December following—13 months after election. The twentieth amendment to the national constitution, submitted to the states early in 1932 and proclaimed in effect in 1933, brought our usage belatedly into line with that of the rest of the world. A Congress, elected in November, now begins its term, and also convenes, on the following January 3.

the letters patent authorizing the session, followed by announcement by the Lord Chancellor, in the event that the session is the first one of a new parliament, that it is the desire of the crown that they proceed to choose "some proper person" to be their speaker. Headed by the clerk, the commoners withdraw to attend to this matter, and on the next day the newly elected official, accompanied by the members, presents himself at the bar of the Lords, announces his election, and, through the Lord Chancellor, receives, as a matter of form, the royal approbation. Having demanded and received a guarantee of the "ancient and undoubted rights and privileges of the Commons,"<sup>1</sup> the speaker and the members retire to their own quarters, where each takes a simple oath (or makes an affirmation) of allegiance and personally signs the roll.<sup>2</sup>

If, as is not unusual, the king meets Parliament in person, he goes in state, probably the next day, to the House of Lords and there reads to the assembled lords and commoners a document prepared and placed in his hands by the prime minister, and termed the Speech from the Throne.<sup>3</sup> In this communication, bearing some analogy to the president's message in the United States, the government of the day comments on the general state of the realm, touches on foreign relations, demands the annual supply for the public services and bespeaks a sympathetic hearing for the requests later to be made on that score, and says something about the great measures that are to be introduced

<sup>1</sup> The privileges specifically asserted and demanded are free speech, freedom from arrest, access to the crown, and having the most favorable construction put upon proceedings. There are, however, other privileges, *e.g.*, the right to regulate its own proceedings, which the House does not specifically demand on this occasion. On this matter of privileges, see W. R. Anson, *Law and Custom of the Constitution* (5th ed.), I, 162-198, and A. L. Lowell, *Government of England*, I, Chap. xi. A valuable monograph is C. Wittke, *The History of English Parliamentary Privilege* (Columbus, 1921).

<sup>2</sup> In the Commons, members are sworn in in batches of five, and the roll is in the form of a leather-bound book opening at the bottom instead of the sides; in the Lords, members are sworn in one by one, and the signatures—"Birkenhead," "Morley," "Rosebery," etc.—are placed on a long sheet of paper which winds around a roller, *i.e.*, literally, a roll. The oath in both houses is: "I, \_\_\_\_\_, swear by Almighty God that I will be faithful and bear true allegiance to His Majesty King \_\_\_\_\_, his heirs and successors, according to law. So help me, God."

<sup>3</sup> If the sovereign does not attend in person, he is represented by five scarlet-robed lords commissioners, and the Speech is read by the Lord Chancellor. Queen Victoria, even though present, usually requested that official to read the document.

during the session. Frequently the Speech is couched, however, in general, if not cryptic, language, so that curiosity as to what the government's policy is going to be is left largely unsatisfied. In any event, after the sovereign (or the commission) has withdrawn, the commoners return to their chamber, and the Speech is reread and an address in reply voted in each house, accompanied as a rule by debate bringing the policies of the rival parties into clear view, and sometimes extending over several days. Thereupon committees are set up, bills introduced, and motions made; in short, the houses enter upon their regular activities. In the event that a session is not the first one of a parliament, the election of a speaker and the administration of oaths are, of course, omitted.

Some quaint  
ceremonies

Richard Cobden once spoke of the ceremonies connected with the opening of a session of Parliament as "attended by much barbaric pomp." Certainly they abound in the quaint and picturesque, with something of the naïve, and possibly a little of the ridiculous. One of the humors of the occasion is the search of the corridors, vaults, and cellars of Westminster Palace on the morning of the first day of the session to see that the building is safe for king, lords, and commoners to enter. Reminiscent of apprehensions roused by the famous Gunpowder Plot of 1605, the precaution is perhaps not entirely meaningless in these days of recurring threats of Communist demonstrations. But the picture of twelve lusty Yeomen of the Guard (familiarily known as "beefeaters"), in full Tudor regalia, solemnly trudging through endless rooms, corridors, and subterranean passages carrying Elizabethan lanterns amid a blaze of electric light, and poking among gas fittings and steam pipes for concealed explosives, is calculated to draw a smile. Almost equally amusing is the practice in each house of giving a dummy bill a first reading *pro forma* before the Speech from the Throne is reread by the presiding officer, simply to show that the house has a right to debate other matters than those mentioned in the Speech and to initiate measures of its own. This sacred right once vindicated, the measure is promptly put aside and forgotten. Each house uses the same bill on every such occasion, and in the Commons an identical "property" document has been preserved for the purpose in the drawers of the table since the present chamber was first occupied in 1852.

The ceremonies that bring a session to a close are the same whether it is expected that the existing parliament will meet again or it is known that prorogation is merely preliminary to a dissolution. In earlier days, the king usually appeared in person, and (the commoners having been summoned to the bar of the Lords) read a Speech from the Throne announcing the prorogation. Nowadays, however, a session is customarily closed, just as it is sometimes opened, not by the king in person but by his commissioners, the prorogation speech being read by the Lord Chancellor. In any case, the communication never fails to congratulate "my lords and gentlemen" on the useful laws they have passed and to thank them for the supplies they have granted. Even if a dissolution is definitely intended, however, it scrupulously refrains from saying so, or even hinting at the fact. The ceremony over, the Lord Chancellor gathers up his long robes, and, attended by the purse-bearer and the mace-bearer, walks down to the bar of the Lords and disappears; so far as the upper chamber is concerned, the session is ended. In the Commons, however, it remains for the speaker to return, to "inform" the members where he has been, and to read the speech; whereupon, walking backwards, bowing to his empty chair, and closely followed by the sergeant-at-arms bearing the mace, he too disappears. If a dissolution is contemplated, everybody knows it, even though there has been such remarkable official reticence about it. The prospect need not disturb the peers; they know that they will be summoned again to the red benches. But the commoners are situated differently. They must go back to the constituencies and make a fight for reelection, with the outcome in many cases uncertain. Many of them will not come back; for, as a defeated member once sorrowfully remarked, it is much easier to go to the country than to return from it.<sup>1</sup>

How a session is closed

Both houses of the American Congress regularly meet at noon, on all week-days of a session except as adjournments are taken for lengthier periods. The British House of Commons, under its

Sittings of the houses

<sup>1</sup> On the ceremonies connected with the opening, adjournment, prorogation, and dissolution of a parliament, see *Companion to the Standing Orders of the House of Lords on Public Business* (London, 1909), 1-16; C. F. M. Campion, *An Introduction to the Procedure of the House of Commons* (London, 1929), 74-84; W. R. Anson, *Life and Custom of the Constitution* (5th ed.), I, 63-72; J. Redlich, *Procedure of the House of Commons*, II, 51-64; and M. MacDonagh, *Pageant of Parliament*, I, Chaps. viii-ix.

standing orders, meets on the first four working days of the week at 2:45 P.M., on Friday (reserved for private business, petitions, notices, and motions) at 11 A.M., and on Saturday not at all except by special arrangement. As at Washington, the earlier portions of the day are reserved for committee work. Except on Friday, when the rules require the speaker to adjourn the House at 4:30, "notwithstanding there may be business under discussion," sittings continue uninterruptedly throughout the afternoon and into the night, to 11:30 (the rules say) unless certain specified kinds of business are under consideration, in which event there is no limit except the endurance of the members. All-night sittings are not unknown. Under less pressure of work, and disinclined to lengthy debate, the House of Lords meets only on Monday to Thursday inclusive, and from 4:30 to 6:30 or thereabouts.

A sitting is opened in the Commons by the stately march of the speaker, accompanied by chaplain, sergeant-at-arms, and mace-bearer, up the center aisle to the table; whereupon the chaplain reads a psalm (always the 67th) and three short prayers, the members facing the aisle during the former and, for some unknown reason, turning toward the wall during the latter. Visitors are not admitted to the galleries until prayers are over; and members of the ministry are conspicuous for their absence, not—as one writer facetiously suggests—because they are less in need of the benefits of prayer than are the private members, but because, unlike the latter, they are not under the necessity of being on hand to reserve their seats. Prayers ended, the mace is placed upon the table, the speaker assures himself that a quorum (forty) is present, the doorkeeper shouts "Mr. Speaker at the chair"—and the day's business begins. The ceremony in the House of Lords is approximately the same, the ecclesiastical members taking turns in reading prayers.

"Who goes home?"

Equally with the lighted lanterns of the beefeaters, the cry that resounds through lobby and corridor when at the close of a sitting the speaker leaves the chair carries one back to the London of long ago. The principal doorkeeper starts it. Stepping a pace or two into the lobby, he shouts "Who goes home?" The policemen stationed in the lobby take up the cry, which is echoed by their fellows at the doors of the library and the smoking-room, and wherever else they are likely to be heard by the more or less scattered members. Two hundred years ago, going

home at midnight through the ill-lighted and poorly policed streets leading from Westminster to residential London was a serious matter, and hence at intervals during the evening squads of yeomen from the Tower were sent over to act as escorts to members desiring to leave. "Who goes home?" was the call employed to round up the departing groups; and although London's streets are now practically as safe by night as by day and the services of the beefeaters have long since been dispensed with, "Who goes home?" still breaks upon the midnight air exactly as when Charles II or Queen Anne reigned. More than that, as the members gather up papers and file out, the attendants still ply them with the admonition, "The usual time tomorrow, sir, the usual time tomorrow," precisely as if every one did not know that if there was any doubt about the House resuming business at 2:45 tomorrow, every newspaper would find material in the fact for a front-page story. Verily, as Sir Courtenay Ilbert has remarked, "the parliament at Westminster is not only a busy workshop; it is a museum of antiquities."<sup>1</sup>

Some of these quaint usages could be given up with no more serious effect than that of making Parliament less picturesque. But officers, committees, rules to which we now turn—are indispensable. The most conspicuous and important officer in each house is, of course, the man who presides, *i.e.*, in the House of Commons, the speaker, and in the House of Lords, the Lord Chancellor. There are, however, other officers of dignity and authority. In the lower house these are, chiefly, the clerk and his two assistants, the sergeant-at-arms and his deputies, and the chairman and deputy chairman of ways and means (now more commonly known as the chairman and deputy chairman of committees); to which may be added, as an officer of ceremonial importance, the chaplain. The clerk and the sergeant-at-arms, together with their assistants, are appointed for life by the king on nomination of the prime minister; the chaplain is appointed by the speaker; the chairman and deputy chairman of committees are, like the speaker, elected by the House for the duration of a parliament, although, being (unlike all of the others) party men, they retire when the ministry that has nominated them goes out of office.

Officers of the  
House of  
Commons

<sup>1</sup> Preface to J. Redlich, *The Procedure of the House of Commons*, I, p. vi.



Little comment on the functions and duties of these officers is required, except in the case of the speaker. The chaplain appears at the opening of each sitting and reads the psalm and prayers. The clerk, whose place, with his aides, is at the table, signs all orders of the House, endorses bills sent or returned to the Lords, reads whatever is required to be read during the sittings, records the proceedings of the chamber, has custody of all records and other documents, and, in collaboration with the speaker, supervises the preparation of the *Official Journal*.<sup>1</sup> The sergent-at-arms attends the speaker, preserves decorum in the chamber and its precincts, directs the doorkeepers and messengers, enforces the House's orders, executes warrants issued by the speaker in its name, and presents at the bar persons qualified or ordered to appear there. The chairman of committees (in his absence the deputy chairman) presides over the deliberations of the House when the body sits as committee of the whole, and at other times on request of the speaker, and exercises general supervision over private legislation.

**The speaker:** The speakership is an office of much dignity, honor, and power. No one can say precisely when it originated. Sir Thomas Hungerford, elected to the post in 1377, seems to have been the first to bear the title. But he is reported to have had predecessors, and it is likely that some such office existed from the very beginning of the House. In the early days, it will be remembered, the commoners had no direct part in legislation. All that they could do was to make requests of the king for new or amended laws or for redress of grievances; and the speaker was the man whom they commissioned to bear their petitions and urge them upon the sovereign's attention. He got his title from being the spokesman of the House in its dealings with the crown—from speaking *for*, not *to*, his fellow-members. He was never supposed to do much talking in the House, and nowadays he does none at all except in performing his duties as moderator.

**1. Election** It was a triumph for the House of Commons when it gained the right to choose its own speaker. In earlier days, the king appointed; and long after the office became nominally elective the usage was, as Coke testified in 1648, for the sovereign to

<sup>1</sup> Sir Thomas Erskine May, whose monumental treatise on English parliamentary procedure is cited frequently in this chapter and succeeding ones, held the office of clerk for many years.

"name a discreet and learned man" whom the Commons then proceeded to "elect." To this day, the choice of the House is subject to the approval of the crown. No speaker-elect, however, has been rejected since 1679, and the royal assent has become merely a matter of form. A speaker is elected at the opening of each parliament and serves as long as the parliament lasts. If the speaker of the preceding parliament is still a member of the House and is willing to be reëlected, he may count on receiving the honor; for, the speaker having long ago become a non-partisan official, the custom for a hundred years has been to reëlect an incumbent as long as he is disposed, and able, to serve. Changes of party situation in the House since he was originally elected make no difference; as speaker he is supposed to have no party connections or prejudices. If a new man must be found, the selection is made—just as it is, under similar circumstances, in the American House of Representatives—before the House itself convenes. At Washington, the choice is made by the caucus of the majority party, and election by the House follows. At Westminster, the cabinet, but chiefly the prime minister, looks over the field and decides upon the right man, after making certain that the selection will be acceptable to at least the government majority in the House. A Conservative cabinet will always nominate a Conservative for the position, and he will be elected on the floor of the House by Conservative votes. But, as has been indicated, once in the office, he may expect to be reëlected indefinitely, and without opposition, whatever party is in power.<sup>1</sup>

We have it from a sixteenth-century parliamentarian that a speaker ought to be "a man big and comely, stately and well-spoken, his voice great, his carriage majestical, his nature haughty, and his purse plentiful." The plentiful purse is still a convenience, though the haughty nature can easily be overdone. But in any case the speaker must still be a man of parts—able, vigilant, imperturbable, tactful. All of these qualities, and more, he will require in the discharge of his onerous and delicate duties. Sitting in his high-canopied chair, in wig and gown,

2. Duties

<sup>1</sup> The last occasion on which a speaker was opposed for reëlection was in 1835. Similar action was threatened in 1895, but did not materialize. When a new man is to be installed in the office, there is usually a minority, as well as a majority, candidate. The present speaker, Captain E. A. Fitzroy, was first elected in 1928.

he presides almost constantly whenever the House is in session. He decides who shall have the floor—a matter not as often simplified by prearrangement as in the American House of Representatives, and especially in Continental legislatures—and all speeches and remarks are addressed to him, not to the House. He warns disorderly members and suspends them from sittings, and, with the aid of the sergeant-at-arms, preserves decorum suitable to a deliberative assembly, adjourning the House if disorder becomes too serious to be dealt with by the force at the command of the sergeant-at-arms. He interprets and applies the rules. He puts questions and announces the results of votes. He decides points of order, and for that purpose must be a thorough master of the technicalities of procedure. Hardly a situation can arise that has not arisen before, and if the speaker knows the precedents he cannot go far wrong. Knowing the precedents of the British House of Commons is, however, no child's play. In any event, the speaker's rulings are final; "the Chair, like the Pope," humorously replied Speaker Lowther when asked how errors that he made could be rectified, "is infallible." The only requisite is that the speaker shall make his rulings in such fashion that the members will have complete confidence that they represent, not the speaker's own will imposed upon the House, but rather the will of the House itself as embodied in its rules and precedents. Under the Parliament Act of 1911, it falls to the speaker to decide (if there is doubt) whether a bill is or is not a money bill—a decision which may, of course, go far toward determining the fate of the measure. Upon him, as an impartial, non-partisan, and well-informed dignitary, is occasionally devolved also the task of appointing the members of great conferences or commissions, such as the one which did the spade-work preliminary to the electoral reform act of 1918. In addition, he sometimes presides over such conferences.

3 Non-partisan character

In all of these activities the speaker refrains scrupulously from any display of personal sympathies or partisan leanings. He never takes the floor to engage in debate, even when the House is sitting as committee of the whole. He never votes except to break a tie, and in the rare instances in which this becomes necessary he, if possible, gives his casting vote in such a way as to avoid making the decision final, thereby extending the House another opportunity to consider the question. The con-

stituency which he represents is, of course, in effect disfranchised, but it has its reward in the distinction which he brings it, and almost unfailingly reëlects him to his seat without opposition. Outside, no less than inside, of the House, the speaker abstains from every appearance of partisanship. He never publicly discusses or voices an opinion on party issues; he never attends a party meeting; he has no connections with party newspapers; he never sets foot in a political club; he, of course, makes no campaign for his own reëlection. The speaker of the American House of Representatives is, quite frankly, a party man—with less power, it is true, that can be used for partisan purposes than before the reforms of 1910-11, but nevertheless an official who serves, and is expected to serve, the interests of his party so far as it can be done without too flagrant unfairness to the opposition. The contrast with the speakership at Westminster is indeed striking. This is not to say that the American speakership is indefensible. Traditions and circumstances differ in the two countries, and the history of the American, as of the English, office has, on the whole, been honorable. But, as would be expected, the deference paid the chair at Westminster is considerably greater than at Washington, having often been, as Sir Courtenay Ilbert remarks, “the theme of admiring comment by foreign observers.”<sup>1</sup>

As is befitting so assiduous a servant of the state, the speaker has certain perquisites. He has a salary of £5,000 a year. Since 1857, he has had as his official residence a wing of the Palace of Westminster extending from the Clock Tower to the Thames; and there, being repressed politically but not socially, he gives numerous dinners and other entertainments. In the official order of precedence he ranks next after the Lord President of the Council, which makes him the seventh subject of the realm. And when he finally chooses to retire, he is elevated to the peerage as a viscount and liberally pensioned.<sup>2</sup>

4. Perquisites

<sup>1</sup> *Parliament*, 140-141.

<sup>2</sup> Upon retiring from the speakership in 1928, Mr. John H. Whitley, however, broke with precedent of more than a hundred years by declining the offer of a peerage. He assigned “personal reasons” for his act. The history of the speakership is recorded conveniently in E. Porritt, *Unreformed House of Commons*, I, Chaps. xxi-xxii, and more fully, in a biographical fashion, in A. I. Dasent, *The Speakers of the House of Commons from the Earliest Times to the Present Day* (New York, 1911). There is a useful sketch in J. Redlich, *Procedure of the House of Commons*, II, 156-168. The best brief description and interpretation of the office is *ibid.*,

Committees  
in the House  
of Commons:

Legislative bodies the world over save time and gain in efficiency by delegating preliminary consideration of bills and other proposals to committees. The British House of Commons is no exception to the rule. As early as the reign of Elizabeth, it was not unusual to refer a bill, after its second reading, to what we should now call a select committee, *i.e.*, a group of members specially designated to study the measure and report on it; and in the last fifty years—notably since 1919—the amount of service required from committees has been steadily increasing. The committees now employed are of five main types: (1) the Committee of the Whole House, (2) select committees on public bills, (3) sessional committees on public bills, (4) “grand,” or standing, committees on public bills, and (5) committees on private bills.

1. Commit-  
tee of the  
Whole

The Committee of the Whole consists of the entire body of members, and is distinguishable from the House itself only in that (1) it is presided over, not by the speaker, but by the chairman of committees (or his deputy), who sits, not in the speaker's chair, but in the clerk's chair at the table, (2) the mace, which is the speaker's symbol of authority, is for the time being placed under the table, (3) a motion need not be seconded, (4) the “previous question”—aimed at cutting off debate—cannot be moved, and (5) members are allowed to speak any number of times on the same question. Procedure is thus much less formal and restricted than in the House as such, making for flexibility and freedom, though hardly for speed, in the handling of vital and complicated matters. When its work is done, the committee “rises,” the House again comes into session, the speaker resumes the chair, and the chairman of the committee reports, for adoption by the House, whatever conclusions the committee has arrived at. The practice of referring bills to committees of the whole house arose in the reign of Charles I, from which time until 1907 it underwent little change. Until the date mentioned, a public bill, after its second reading, normally went to committee of the whole. Since 1907, however, when provision

131-155. Much interesting and useful information can be gleaned from J. W. Lowther, *A Speaker's Commentaries*, 2 vols. (London, 1925). The author—the present Lord Ullswater—was speaker from 1905 to 1921. The American speakership is dealt with in M. P. Follett, *The Speaker of the House of Representatives* (New York, 1904), and C. W. Chiu, *The Speaker of the House of Representatives Since 1896* (New York, 1928).

was made for increased use of standing committees, fewer measures have been referred to the larger body, and none (except money bills and bills for confirming provisional orders<sup>1</sup>) now go there unless the House, on motion made directly after second reading, so designates. The most important matters regularly considered in committee of the whole are the estimates of expenditure and revenue and the resolutions by which the committee prepares the way for the passage of the great appropriation and finance acts by the House. When the business in hand relates to appropriations, the committee is known, technically, as the Committee of the Whole on Supply, or simply the Committee of Supply; when to revenues, it is styled the Committee of Ways and Means.<sup>2</sup>

Select committees consist, as a rule, of 15 members, and are created from time to time to investigate and report upon specific subjects on which legislation is pending or contemplated. It is through them that the House collects evidence, examines witnesses, and in other ways obtains information required for intelligent action. After a select committee has fulfilled the immediate purpose for which it was set up, it passes out of existence. Each such committee chooses its chairman, and each keeps detailed records of its proceedings, which are included, along with its formal report, in the published parliamentary papers of the session. Formerly, the members were usually designated by the Committee of Selection, which itself consists of 11 members chosen by the House at the beginning of each session. But nowadays the names of the persons who are to constitute the committee are proposed in the motion of the member who moves the committee's appointment. The number of select committees is, of course, variable, but rarely small; something like a score are usually provided for in the course of a session. As a rule, eight or ten are set up for an entire session, and hence are known as sessional committees. Of these, the Committee of Selection is a leading example.

2. Select committees

Beginning in 1882, certain so-called "grand," or standing, committees have been created, to the end that the time of the House may be further economized. At first, there were but two, later four, still later six; at present there are five, all set

3. Standing committees: origin and nature

<sup>1</sup> See p. 271 below.

<sup>2</sup> See pp. 277-278 below.

up at the opening of the first session of a new parliament and lasting (with such changes of personnel as may become necessary) until that parliament is prorogued. The plan of employing standing committees to which bills should as a regular thing be consigned for study and report was accepted by British parliamentarians only slowly and grudgingly. To this day, nearly every one would prefer that all measures be considered in committee of the whole, if only time permitted; and the standing committees are conceived of simply as substitutes for committee of the whole, to which they are to conform in nature and procedure as closely as conditions allow. To this end, they are purposely made very large. Since 1926, each has consisted of from 30 to 50 members, to which number the Committee of Selection, which designates the members (after conference with government and opposition leaders), may add from 10 to 35 others to serve during the consideration of a particular bill. Resemblance to committee of the whole is further preserved by making the standing committees committees on no definite subjects or branches of legislation, but simply promiscuous groups of members, designated merely as A, B, C, and D committees, to which measures will be allotted by the speaker indiscriminately.<sup>1</sup> The members specially added to committees for the consideration of particular bills will be chosen, of course, with some regard to their familiarity with the subjects involved. But of the regular membership (except, as explained, in the case of the Scottish Committee) this is not true. The system is thus fundamentally different from that found in the United States and in Continental parliamentary bodies, where, almost without exception, standing committees are made up with a view to handling bills relating to specified subjects—foreign affairs, finance, commerce, agriculture, and what not.

#### Workings

To the British standing committees are sent nowadays, after second reading, and unless the House directs otherwise, all public bills except those of a financial character and those designed to confirm provisional orders;<sup>2</sup> and the labor entailed is

<sup>1</sup> The fifth of the committees, known as the Committee on Scottish Affairs, is, however, of a different sort. It consists of all of the 74 Scottish members of the House, plus members added for the consideration of particular measures; and all public bills relating to Scotland (except money bills and bills to confirm provisional orders) are referred to it.

<sup>2</sup> Private bills, having in view the special interest of some locality, person, or

such that the House has been obliged to amend its rules so as to permit the committees to sit while the House itself is in session, subject to the very proper requirement that when a division is called in the House, committee proceedings shall be suspended long enough to permit the members to go into the chamber and vote. It is expected that measures referred to a standing committee—having already been approved by the House as to general principles—will be so thoroughly scrutinized and evaluated by it that, except in the case of those that stir the widest differences of opinion, they will consume no great amount of additional working time of the House as a whole. They may, of course, be reported back in an amended form which the cabinet—their real author and sponsor in most instances—would not prefer; and this may give rise to extended discussion and ultimate compromise. Having less assured means of control over committees than over the House as a whole, the cabinet would, indeed, be glad, if the time of the House permitted, to have no committee reference at all except to committee of the whole. It, however, encounters no such rough usage at the hands of the committees as that which in France perennially adds to the miseries of ministerial life.<sup>1</sup>

Further contrasts with the committee system operating in the American Congress appear in the following facts: (1) While the British committees are made up so as to include representatives of all parties, there is no effort to achieve such an exact proportioning of party quotas as in our Senate and House of Representatives. (2) In the British system, there are no such rigid rules determining the rank of committee members and succession to chairmanships, committee chairmen being chosen, indeed, from its own number by a "chairman's panel for standing committees" named by the Committee of Selection.<sup>2</sup> (3) Whereas in the House of Commons finance bills, bills to confirm provisional orders, and occasionally other bills are considered only in committee of the whole, in the American

group of persons, rather than the interests of the people generally, are referred in all cases to small private bill committees which are described in another place. See p. 270 below.

<sup>1</sup> See pp. 559–560 below.

<sup>2</sup> Chairmen of committees on private bills are named by the Committee of Selection itself, while select committees on public bills, as has been indicated, choose their own chairmen.



House of Representatives all measures, of ~~whatsoever~~ sort, go to one of the standing committees. (4) Whereas in the former body every bill referred to a standing committee must be reported out, in the latter many—indeed most—measures “die in committee,” *i.e.*, are pigeonholed and never reported out at all.<sup>1</sup>

Organization  
of the House  
of Lords

What of the forms of organization in the more aristocratic and leisurely assemblage at the opposite end of Westminster? Here, in contrast with the Commons, the officers are almost all appointive. The most conspicuous, though hardly the most powerful, is the severely judicial figure in big gray wig and black silk gown who occupies the woolsack, *i.e.*, the Lord Chancellor. The duty of presiding at sittings of the House of Lords is, of course, only one of many that fall to this extraordinary dignitary. Any man who reaches the lord chancellorship is pretty certain already to be a peer. If he is not, the defect can easily be, and invariably is, remedied. There is, however, no legal necessity that this be done, because the theory is that the woolsack is outside the precincts of the chamber, and the presiding official, *as such*, is not a member of the body. Member or not, the powers allowed the Chancellor fall far short of those commonly assigned a moderator. For instance, if two or more members simultaneously attempt to address the chamber, the House itself, not the chair, decides which of them shall have the floor. Order in debate is enforced, not by the Chancellor, but by the House, and when the members speak they address, not the chair, but “My Lords.” As a peer, the Chancellor may, and regularly does, speak and vote, on party lines, like any other member; but in no case does he have a casting vote.

Other principal officers of the House of Lords who owe their positions to government appointment include the clerk of the parliaments, who keeps the records, and the sergent-at-arms;

<sup>1</sup> The committees of the House of Commons as they stood before the changes of 1919 are described in A. L. Lowell, *op. cit.*, I, Chap. xiii, and J. Redlich, *op. cit.*, II, 180-214. A résumé of more recent date is G. F. M. Campion, *An Introduction to the Procedure of the House of Commons*, Chap. vii. The committee system of the American House of Representatives and Senate is described briefly in F. A. Ogg and P. O. Ray, *Introduction to American Government* (4th ed.), 439-444, 452-453, and more fully in R. Luce, *Congress: An Explanation* (Cambridge, Mass., 1926), and D. S. Alexander, *History and Procedure of the House of Representatives* (Boston, 1916). For comparison with the committee system of the French Chamber of Deputies, see pp. 551-555, 558-560 below.

and one important officer is chosen by the House itself, *i.e.*, the lord chairman of committees, to whom it falls to preside in committee of the whole, in all committees on private bills, and indeed in all other committees unless ordered otherwise.

The committee system is broadly similar to that found in the House of Commons, and hence does not call for detailed description. Besides the Committee of the Whole, large use is made of sessional and select committees; and there is a so-called "standing" committee for textual revision, made up, however, at the beginning of each session, to which every bill, after passing through the Committee of the Whole, is referred unless the House orders otherwise. Sessional committees are created for a session, and consist either of all members present during the session (being thus identical in personnel with the Committee of the Whole) or of smaller, and sometimes indefinite, numbers of members. Select committees are named by the House itself, usually with the power to appoint their own chairmen; and proposals may be referred to them at any time between the second and third readings when additional information is desired.

## CHAPTER XIII

### PARLIAMENT AT WORK: LAW-MAKING

Centuries of usage and growth have brought the internal organization of the two branches of Parliament to the form described in the preceding chapter. How does the machinery thus laboriously built up actually operate? What is the order, or routine, of a parliamentary day? How are debates carried on and decisions arrived at? How are laws made, taxes levied, expenditures voted? What, in short, of that sometimes dull, yet usually interesting, and occasionally exciting, thing which we call parliamentary procedure?

Rules of procedure

Whatever the business in hand, each branch of Parliament deals with it by definite and accepted methods, as prescribed by rules of the house. In earlier days, these rules developed slowly and consisted almost entirely of unwritten custom. Even in the House of Commons, the order of business was not "laid down in systematic enactments, still less in a code of parliamentary procedure; it rested on living tradition, on concrete precedents found in the journals of the House, and on definite resolutions, which, as a rule, were of a declaratory, not enacting, character."<sup>1</sup> In the leisurely eighteenth century—a golden age of parliamentary oratory, but an epoch of relatively little great legislation—this customary law of the Commons was elaborated into a vast, technical, mysterious, stereotyped system of procedural precedents and rules which may have served well enough at the time, but which, under the changed conditions after 1832, grew increasingly cumbersome and impossible. The "keen wind of democracy" had begun to whistle through the Palace of Westminster; popular demand for remedial and constructive legislation mounted to unprecedented proportions; multiplying problems tested parliamentary efficiency as never before; and to a steadily increasing extent law-making, instead of being left, in the main, to private members, became a matter of governmental leadership and initiative. As a consequence,

1. Development

<sup>1</sup> J. Redlich, *Procedure of the House of Commons*, I, p. xxix.

the House of Commons, floundering amid a welter of time-consuming technicalities, began to cut its way out—doing so, naturally, by deliberately adopting new or revised rules in the interest of economy of effort and of time. Gradually, the jungle was to some extent cleared and the chamber came into possession of a considerably simplified scheme of procedure, in which custom still played an important rôle, but with “orders,” *i.e.*, definitely adopted regulations, holding an increasingly prominent position. And this is the situation today. Custom and precedent contribute a great part of the scheme or plan under which the work of the House is carried on. But adopted orders covering such matters as frequency and duration of sittings, allotment of time to different kinds of business, stages in the consideration of bills, kinds and composition of committees supplement, summarize, and clarify. One is reminded of the way in which the general body of English law, or indeed the English constitution itself, took its present form; as “a supplementary chapter to the book of procedure,” adopted orders or rules bear the same relation to the customary law of each house that acts of Parliament bear to the common law of the country.

In the United States, the Senate is a continuously organized body, and its adopted rules remain in effect until modified or repealed; whereas the House of Representatives is organized afresh with the beginning of every Congress and must start off on each occasion by readopting the rules of the preceding House, in identical form or with such changes as dissatisfied members may be able to procure. The British House of Commons is in this matter nearer to the position of our Senate. It is, to be sure, reorganized following every election. But the bulk of its written rules, once adopted, remain in effect, as “standing orders,” as long as the House does not see fit to alter or displace them. Some, indeed, remain indefinitely in effect, as “general orders,” without being classified technically as “standing.” On the other hand, there are also “sessional orders,” adopted for the period of a session only. By simple majority vote of the House, any rule can be suspended, amended, or repealed at any time. But again we must bear in mind that to an amazing extent the basis for settling the steady stream of procedural questions that arise is to be found, not in the adopted, printed orders or rules, but in the customs and precedents of

2. Present  
form and  
status

the House. The speaker (at all events, with the aid of experts) must know these equally with the formal rules; and this is why his duties as moderator are so exacting. Few other members make any pretense to knowing them in more than a rough sort of way. Lord Palmerston admitted that he never fully mastered them; Gladstone was on many occasions an inadvertent offender against them. There was something more than humor in Parnell's reply to the Irish member who asked how he could learn the rules. The reply was, "By breaking them."<sup>1</sup>

Daily order  
of business in  
the House of  
Commons

It is in the rules (mainly the standing orders) that one will find laid down the sequence of ceremonies and actions that go to make up the routine of a parliamentary working day. Briefly, this order of business in the House of Commons is as follows. At the regular opening hour, which, as we have seen, is 2:45 P.M., the speaker's procession moves down the central aisle, the speaker in wig and gown, the chaplain in gown and stole, the sergent-at-arms with his sword, and the mace-bearer with the mace. A psalm is read, followed by three short prayers. Thereupon the speaker takes the chair and business begins. First comes consideration of such private bills as may be listed on the printed orders of the day, followed by the presenting of petitions. For reasons that will be explained later, the former

<sup>1</sup> For three quarters of a century, the standing orders, or rules, of the House of Commons have been printed in successive editions of a handbook entitled *The Manual of Procedure in the Public Business*, compiled by the clerk of the House. Since 1911 there has also been published, from time to time, *Standing Orders of the House of Commons*. Paralleling these are *Standing Orders of the House of Lords* and *Companion to the Standing Orders of the House of Lords on Public Business*. The standing orders of the House of Commons are printed in T. E. May, *Treatise on the Law, Privileges, Proceedings, and Usage of the House of Commons* (13th ed., London, 1924). A very good sketch of the historical development of procedure will be found in G. F. M. Campion, *An Introduction to the Procedure of the House of Commons*, Chap. i.

Legislative procedure in all English-speaking lands, and to a considerable extent in non-English-speaking countries as well, is based on the historic usages of the British Parliament. In every one of the British dominions the constitution stipulates that, in the absence of specific direction to the contrary, the procedure of the legislature shall be in accordance with parliamentary procedure at Westminster. The manual of procedure which Thomas Jefferson drew up when serving as president of the Senate of the United States, and which is still the kernel of the great body of procedural rules developed at Washington, was based definitely upon eighteenth-century British practice. A treatise on that practice, written by Pierre Dumont but inspired by Jeremy Bentham, became a major influence in the framing of the rules of procedure for the European parliaments which came into existence in the first half of the nineteenth century.

takes little time.<sup>1</sup> The latter also makes no heavy demands; for fewer petitions are presented now than formerly, and all that happens is that members having such communications to submit rise, announce the fact (often without so much as telling what the petition asks), and, walking up the aisle, drop the papers into the yawning mouth of a big black bag that hangs at the left of the speaker's chair.<sup>2</sup> The first stage of the sitting that draws much interest is "question time," when members may put queries to the ministers concerning administrative or other matters. As we shall see, this right of question is exercised freely, and it is hardly necessary to add that question time is often the most interesting portion of the day's proceedings. Then comes the introduction of new members, if there happen to be any, after which the speaker calls upon the clerk to read the orders of the day. The title of the first public bill listed on the day's "order paper" is thereupon read, and debate begins. The benches, empty for the most part during the dinner period, fill up as the evening wears on, and frequently the interest rises until the climax is reached in a final burst of oratory as Big Ben overhead booms the midnight hour. Sometimes the sitting extends later—occasionally, at times of special stress, throughout the night. But ordinarily adjournment is taken by twelve o'clock, when the passer-by may still hear the time-honored call, "Who goes home?" and the attendants' ancient admonition, "The usual time tomorrow, sir; the usual time tomorrow."<sup>3</sup>

Etymologically, Parliament is a place of talk, or discussion; and while nowadays it does many important things without talking much about them—at all events in public—it is most completely itself, and most interesting to observers, when engaged in the give and take of debate. In the House of Lords, as we have seen, all speeches are addressed to "My Lords," and the chamber itself decides who shall have the floor if two or more members claim it at the same time. In the Commons, however,

Character of  
debate

<sup>1</sup> See pp. 299-300 below.

<sup>2</sup> Record of all petitions presented is made in the journal of the House, and a committee on petitions looks over the documents to see that they are in the prescribed form. But rarely are they heard of again. "As far as practical purposes are concerned, petitions might as well be dropped over the Terrace into the Thames as into the mouth of the appointed sack." H. Lucy, *Lords and Commons*, 106.

<sup>3</sup> For the time-table of a sitting, see G. F. M. Campion, *op. cit.*, 113-114, and discussion following.

all remarks are addressed to "Mr. Speaker," who, assisted somewhat by lists put in his hands by the party whips, indicates the member who is to go on with the debate when another has left off speaking. In so far as possible, he will give both sides an equal opportunity for expression of opinion; and he will not permit a member to speak twice upon the same question, unless it be to explain a portion of his speech which has been misunderstood, or in case an amendment has been moved which, in effect, constitutes a new question. In accordance with long established usage (now embodied in the rules), he will not allow a member to read a speech from manuscript;<sup>1</sup> and he not only may warn one who is straying from the subject, or is merely repeating things he has already said, but may require him, after the third unheeded admonition, to terminate his remarks and give way to a fresh debater. Notwithstanding a good many tumultuous episodes in its history, especially at the hands of the Irish Nationalists, and more recently of the Clydeside Laborites, the House of Commons rates high on the score of decorum. This does not mean, however, that the 50 to 100 members ordinarily to be observed sprawling here and there on the green benches--unless it be on budget night or some other "full-dress" occasion--are always attentive to what is going on, or deferential toward those who are addressing them. Looking down from the visitors' gallery, one is apt, on the contrary, to see members casually strolling into and out of the chamber, others chatting and occasionally breaking into loud laughter, a few sitting abstractedly with their hats tilted over their eyes, a few waiting impatiently for a chance to make speeches of their own, still fewer listening with some appearance of genuine interest in what is being said; while from the dark recesses of the speaker's chair sounds the reiterated "Order, order," designed to keep the noise and inattentiveness within bounds reasonably compatible with the historic dignity of the place.<sup>2</sup>

<sup>1</sup> The use of notes is permissible.

<sup>2</sup> Members of the House are required by statute to be in attendance unless granted leave of absence on account of ill health or other urgent circumstances. This means only, however, that they must remain in London and participate in parliamentary work with reasonable fidelity; most of their time will ordinarily be spent in the lobbies, in the library, in committee rooms, on the terrace, at clubs and theaters--anywhere but on the benches in the House. Regularity of attendance was stimulated somewhat by provision, in 1911, of an annual salary of £400 for members not already in receipt of salaries as ministers, as officers of the House, or as attachés of

Members are not more attentive to formal debate because many, if not most, of the speeches are not worth listening to, and because even if they were, they would, as every one knows, have little or no effect on the fate of the measure in hand. More and more, the real work is done in committee, where— even in committee of the whole—discussion of an informal, conversational nature comes to closer grips with the matters in hand. The truth is that the House no longer has either time or taste for the extensive debates of the old days. Business crowds upon it, rules designed to expedite work tighten up from decade to decade; impatient members puncture bubbles of mere grandiloquence with satirical thrusts that drive all except the most thick-skinned offenders from the floor. That parliamentary oratory is not what it once was cannot be gainsaid. But whether the change is not for the better is another matter. Much of the eloquence that used to crowd the benches was mere emotionalism; much more was only stateliness and ponderousness of speech, with no corresponding originality or richness of thought. It may have been effective once; on more than one occasion in earlier days, the records tell us, the House of Commons was so stirred by impassioned speeches that adjournment was taken to give members time to recover from the overpowering effects of a flight of eloquence. But nowadays the member who wants what he says to be listened to will speak briefly and to the point. He may easily produce more of an impression in ten minutes than in two hours; indeed, the surest way to empty the benches, and to gain personal unpopularity besides, is to run beyond the twenty minutes in which, proverbially, converts to a cause, if won at all, are gathered in. Rare indeed is the parliamentary debater of today of whom it could be written, as Ben Jonson wrote of Bacon, “the fear of every man who heard him was lest he should make an end.”<sup>1</sup>

Parliamentary oratory

the royal household This sum, however, barely covers the added expenses which membership entails, leaving most members under the necessity of supporting their families by going on as best they can with their private businesses or professions.

<sup>1</sup> It is generally agreed that the House of Lords maintains a higher level of debate than the House of Commons. There is more time; there is at least as much ability; and only the leaders participate. A suggestion of Prime Minister Baldwin in 1925 that the debates of the House of Commons be broadcast by radio met with an unfavorable response. It was felt that arguments would tend to be addressed to the listeners-in rather than to the House itself. The House of Lords has, however, so far yielded to modern invention as to install amplifiers for the benefit of its own



Restriction of  
debate

Early in the history of parliamentary bodies it was found necessary to provide ways of bringing debate to a close, especially as a means of circumventing the obstructionist tactics of filibustering minorities. The Senate of the United States did, indeed, get along until recently without any devices for this purpose, and the British House of Lords still does so. As early as 1604, however, the House of Commons adopted a rule under which a motion that "the previous question be now put," if carried, caused a vote on the main question to be taken forthwith; and a similar regulation found a place in the first set of rules adopted by the American House of Representatives in 1789. In both cases, the "previous question" rule has been found useful, but insufficient. Other rules have been adopted empowering the speaker to refuse to entertain a motion which he considers dilatory; the House of Commons forbids a member to speak more than once (except in committee) on a question, and the House of Representatives allows a member only one hour for a speech (with certain qualifications in both instances); and both bodies have brought into play certain special regulations or processes which pass under the general name of closure.

Forms of  
closure:

Closure in the House of Commons takes three principal forms, *i.e.*, simple closure, the "guillotine" (or closure by compartments), and the "kangaroo." The previous-question rule served reasonably well until toward the end of the nineteenth century. Then, however, it proved insufficient as a defense against peculiarly ingenious and persistent obstructionism indulged in by the Irish Nationalists, and in 1881 the House adopted a stronger device which in the following year found a place in the standing orders. The Nationalists have disappeared from the scene. But the new "urgency" rule, recast in 1888, has been found too useful to be given up. "After a question has been proposed," it reads, "a member rising in his place may claim to move 'that the question be now put,' and unless it shall appear to the chair that such a motion is an abuse of the rules of the House, or an infringement of the rights of the minority, the question 'that the question be now put' shall be put forthwith and decided without amendment or debate." Dis-

1. Simple  
closure

members. On British parliamentary oratory in general, see H. Lucy, *Lords and Commons*, Chap. iv; and on debate in the House of Commons, J. Redlich, *op. cit.*, III, 51-69, and T. E. May, *op. cit.* (13th ed.), Chap. xii.

discussion may thus be cut off at any time—even while a member is speaking—and a vote precipitated. At least 100 members (20 in a standing committee) must, however, have voted with the majority in support of the motion.

Closure in this form worked well enough when the object was merely to terminate debate upon a single question. But it, in turn, proved inadequate when applied to large, complicated, and hotly contested measures. As early as 1887, when a bill of this nature relating to the administration of justice in Ireland was before the House, a more drastic procedure was brought into operation under which a motion might be made and carried that at a stipulated hour on a stipulated day the presiding officer should put any and all questions necessary to end debate on the bill, irrespective of whether every part of the measure had by that time been discussed. From the point of view of government leaders bent upon securing the passage of their bills, this was an effective and useful device; and whereas it had been invented purely as an extraordinary remedy to meet a particular situation, it was called into play on later occasions and tended to become a regular feature of parliamentary practice. The drastic nature of the plan, however, won for it the sobriquet "guillotine," and it could hardly have been expected to be popular with the rank and file of the members; besides, experience showed that it was likely to result in the earlier clauses of a bill being considered at length and the later ones not at all. Accordingly, when Gladstone's second home rule bill was before the House in 1893, a new plan was adopted, under which the House agreed in advance upon an allotment of time to the various parts of the measure, debate on each part being terminated when the appointed time arrived and a vote thereupon taken on that part. Known sometimes as "closure by compartments," this improved form of guillotine became a regular feature of House procedure; and it is interesting to observe that debate is frequently limited on similar lines in the American House of Representatives by advance agreements on the amount of time during which discussion shall be allowed to continue on a given bill or part thereof.

The third form of closure, nicknamed "kangaroo," has arisen from occasional authorization of the speaker (and chairman of committees) to single out (hopping, kangaroo fashion, from

2. The "guillotine": closure by compartments

3. "Kangaroo" closure

proposal to proposal) those proffered amendments to a motion or bill which he deems most appropriate for discussion; whereupon those particular amendments can be debated and no others. Closure in this form was regularized by standing order in 1919. It imposes heavy responsibilities on the presiding officer. But it is a tribute to his impartiality, and it saves much time.<sup>1</sup>

Votes and  
divisions

When debate upon the whole or a portion of a measure ends, a vote is taken. It may or may not involve what is technically known as a "division." The speaker (or chairman in committee of the whole) puts the question to be voted on and calls for the ayes and noes. He announces the apparent result, and if his statement of it is not challenged, the vote is so recorded. If, however, there is objection, the order "Clear the lobby" is given, electric bells in every portion of the building are set ringing, policemen in the corridors cry "division," and members troop in from smoking room, library, and restaurant, the more leisurely ones being urged along by the whips of their party in order that when the prescribed two-minute period has elapsed the party will be able to muster its full strength. At the end of the interval the speaker or chairman puts the question a second time in the same form. If, as is practically certain to be the case, the announced result is again challenged, the chair orders the members to the "division lobbies." The ayes pass into a small room at the speaker's right and the noes into a similar one at his left, and all are counted and their votes recorded as they file back to their places in the chamber. The counting is done by tellers, four in number, designated by the chair. If the government leaders construe the vote as one of "confidence," two government and two opposition whips will be named; otherwise, any members may be called upon. The result having been ascertained, the tellers advance to the table, bow to the chair in unison, and one of those representing the majority announces the outcome. The average time consumed is only 15 minutes, as compared with the 30 to 60 minutes required for a roll call in the American House of Representatives. Many divisions are called for and taken, however, which serve no purpose except to enable members to show their constituents that

<sup>1</sup> A. L. Lowell, *op. cit.*, I, Chap. xv; W. R. Anson, *Law and Custom of the Constitution* (5th ed.), I, 275-280; J. Redlich, *op. cit.*, I, 133-212.

they have been attending faithfully to their parliamentary duties.<sup>1</sup>

One who wishes to find out what has been said and done in Parliament on a given subject has at his disposal abundant documentary sources of information, chiefly the journals of the two houses and the "Parliamentary Debates." The journal of the House of Lords goes back to 1509; that of the House of Commons to 1547. In earlier times, both of these official records were encumbered—although often enlivened—by accounts of striking episodes and by notes on important speeches. In the seventeenth century, however, the clerks were forbidden to report the debates, and since that time the journals have consisted only of formal records of "votes and proceedings," *i.e.*, of things done rather than things said. In earlier days, too, reports and papers presented to the houses were often included. But these are now published separately, becoming part of the vast collection of parliamentary papers popularly known as "blue books."

Records

For a long time after the House of Commons forbade its clerks to take notes on speeches, no records of debates were kept except such as were based on unofficial notes taken surreptitiously and published in defiance or evasion of parliamentary orders. A spirited contest over the matter in 1771 opened the way for freer reporting, but only in 1877 did the government begin to subsidize a famous series of "Debates" issued by the private publishing house of Hansard, and not until 1909 was the decision reached to displace this publication by one of a strictly official character, to be known as "Parliamentary Debates," and to be prepared by a staff of reporters in each house who were not connected with any newspaper or commercial publisher. Every day's debates are now reported *verbatim*, and the printed record not only is placed at once in the hands of all members, but also is made available in portly volumes for libraries and private purchasers.<sup>2</sup>

<sup>1</sup> G. F. M. Campion, *op. cit.*, 153-158. In the House of Lords, important questions are decided almost invariably by division. When the question is put, the "contents," *i.e.*, those members who desire to register an affirmative vote, repair to the lobby at the right of the throne, the "non-contents," *i.e.*, those opposed to the proposal, take their places in the corresponding lobby at the left, and both groups are counted by tellers appointed by the presiding officer, two clerks also making a list of the contents and non-contents respectively as they reënter the room.

<sup>2</sup> G. F. M. Campion, *op. cit.*, 62-73.

Parliament  
becomes a  
legislature

Having thus seen something of the general conditions under which Parliament carries on its work, we turn to examine a little more closely two of its major activities or functions, *i.e.*, law-making and finance. It will be recalled that Parliament originally had no power to make laws. That power belonged exclusively to the king, and the most that either house, as such, could do was to petition the crown for laws of specified character or on stipulated subjects. The king complied or refused as he chose; and even when he nominally complied, the new law often turned out to be something very different from what had been asked for. This led to demand, especially by the House of Commons, for a share in the work of law-making; and gradually, as we have seen, the demand was yielded to, until at last, by the fifteenth century, the two houses became (whatever else they were besides) full-fledged legislative bodies, formulating and introducing bills, giving these bills successive "readings," referring them to committees, voting on them, and finally sending them to the king, no longer in the form of humble requests, but as completed measures to which his full and prompt assent was respectfully requested.<sup>1</sup> Long ago it became true that any sort of measure upon any conceivable subject might be introduced, and, if a sufficient number of members of both houses were so minded, enacted into law. No measure might become law until it had been submitted to both houses; and this is still the case, even though under the terms of the Parliament Act it is now easy for money bills, and not impossible for most other kinds of bills, to be made law without the assent of the House of Lords.

General as-  
pects of the  
legislative  
process

Definite procedures for the handling of bills of various kinds grew up early, although always, of course, subject to modification as new conditions developed or needs arose. As matters now stand, a bill, in the ordinary course of things, is introduced in one house, put through three readings, sent to the other house, carried there through the same stages, deposited with

<sup>1</sup> In theory, of course, it is still from the king that all legislation proceeds, as is illustrated by the enacting clause with which every non-financial parliamentary statute of a public character begins: "Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows . . ." For the corresponding formula used in finance measures, see J. Redlich, *op. cit.*, II, 254, note.

the House of Lords to await the royal assent,<sup>1</sup> and, after having been approved, is given its place among the statutes of the realm. Bills, as a rule, may be introduced in either house, by a spokesman of the government or by a private, *i.e.*, a non-ministerial, member. Certain classes of measures, however, may originate in one only of the two houses, *e.g.*, money bills in the House of Commons and judicial bills in the House of Lords. Furthermore, as we shall see, the leadership and control of the ministers have come to be such that both the number and importance of private members' bills have been reduced to minor proportions; while the chances that such bills will be passed, in case they deal with large or controversial matters, have almost completely vanished.<sup>2</sup> The procedure of the two chambers upon bills is broadly the same, although the more leisurely upper house has a more elastic method of doing business than the overworked popular branch.

The process of converting a public bill, whether introduced by the government or by a private member, into an act of Parliament is long and intricate; usually it is spread over several weeks, or even months—occasionally, indeed, years, although in the latter case the bill will have to be introduced afresh at least a time or two in order to be kept alive.<sup>3</sup> The numerous stages that must be gone through have been found useful or indispensable, either as devices of convenience or as safeguards against hasty and ill-considered action. Some of them, it is true, have become mere formalities, involving neither debate nor vote, and the process is decidedly more expeditious than it once was. On the whole, the work of law-making is, however, still slow, and, as will be pointed out, much thought continues to be given to modes of speeding it up, or at all events relieving the House of Commons of the excessive pressure of business under which, as every one agrees, it still labors.

The first step is, of course, the drawing up, or "drafting," of the bill itself. If it is a private member's measure, it is drafted by its sponsor, or by anyone whom he may employ for the

Bill drafting

<sup>1</sup> Except that money bills, after having their inning in the House of Lords, return to the custody of the House of Commons.

<sup>2</sup> See p. 300 below.

<sup>3</sup> By suspending the standing orders of both houses, it is, however, possible, in grave emergency, to carry a measure through all of its stages within a single day. The Defense of the Realm Act of 1914 and a Gold Standard (Amending) Act of 1931 were enacted in this fashion.

purpose. If it is a government bill, it is prepared by expert public draftsmen in the office of the Parliamentary Counsel to the Treasury—lawyers expert in the quaint and often prolix legal verbiage which custom, disregarding of the patience and convenience of the man in the street, still requires to be employed.<sup>1</sup> Being, in this case, a measure on whose fate the fortunes of cabinet and of party may depend, all care will be taken with not only its form but also its content. The minister in whose province it falls, or who for some other reason has been assigned the task, first prepares a rough outline, showing the main features of the project. Then the cabinet (which very likely has already discussed the general subject) scrutinizes the plan and makes such changes as it likes— or as conference with informed and interested people outside of government circles shows to be desirable. Gradually the crude sketch is elaborated into a fairly exact statement of points and principles. Then the official draftsmen are called in to work up the measure in detail, using the written memoranda that have been handed them, but also conferring almost daily with the ministers. Finally the bill comes back into the hands of the cabinet in full array of numbered clauses, sections, and sub-sections, ready to be carried to the House and started on its hazardous journey. The expert service of the Parliamentary Counsel is, of course, designed to ensure that bills will be so drawn as to mean precisely what their sponsors want them to mean, and nothing else; and the end is so well attained that English statutes—in contrast with statutes generally in America, notwithstanding assistance rendered here by numerous bill-drafting bureaus—rank exceptionally high in orderliness and clearness. Despite all precautions, however, bills as they finally emerge from the rough and tumble of debate are, on account of amendments hastily inserted, sometimes considerably less clear than when presented at the clerk's table.<sup>2</sup>

How bills are  
introduced

The procedure of getting bills before the House of Commons is not as complicated as it used to be. Until 1902, it was necessary, in order to introduce a bill, to ask and obtain leave. Nowa-

<sup>1</sup> Parliamentary counsel for this purpose was first provided in connection with the Home Office in 1837. The present connection with the Treasury dates from 1860.

<sup>2</sup> C. Ilbert, *Legislative Methods and Forms* (London, 1901), 77-79, and *The Mechanics of Law-Making* (New York, 1914), Chaps. i, iv-vi. The author of these books was for many years one of three officials in the Treasury known, respectively, as the first, second, and third "parliamentary counsel."

days all that the member needs to do is to give notice of his intention to bring in a bill, and, when called upon by the speaker, to present his bill at the clerk's table without any ceremony. The title of the bill is read aloud by the clerk—and the initial stage, *i.e.*, "first reading," is over. The bill is then printed and placed on the calendar to await its turn to be called up. Occasionally, however, a minister, introducing an important measure, makes a brief explanation of it, one equally short speech in criticism being allowed the other side. And once in awhile a minister reverts to earlier usage by asking leave to introduce, thereby gaining an opportunity to make a long speech both explaining and defending the bill's contents. Considerable debate may follow; and of course the House must vote whether to grant or withhold the desired permission.

On a day fixed in advance by an order of the House, the introducer of the bill moves that it "be now read a second time"; and it is at this point that the battle between friends and foes of the measure really begins. The former explain and defend it in lengthy speeches; the latter criticize and attack it, usually ending by moving a hostile amendment. Sometimes the amendment states specific reasons why the second reading should not be proceeded with, but more frequently—employing what has come to be accepted as the most courteous method of dismissing a bill from further consideration—it runs simply, "that this bill be read a second time this day six months," or some other time at which the House is expected not to be in session. The debate on second reading is confined to the bill's aims, principles, and larger provisions. There is no point to discussing details until it appears whether the House is minded to enact any legislation of the kind at all, and any member who at this stage enters into the minutiae of the measure further than is necessary to a consideration of its principles will be admonished or stopped by the chair. The debate ended, the motion is put. If the opposition prevails, the bill perishes; and while government bills almost always come through (failure to do so, being a government defeat, would be likely to upset the ministry), the mortality of private members' bills at this stage is very great. A bill which passes second reading is "committed," bringing it up against another and still higher hurdle.

Prior to 1907, the bill would normally have gone to committee



Committee  
stage

of the whole. Nowadays it goes there if it is a money bill or a bill confirming a provisional order, or if, on grounds of its exceptional importance or highly controversial nature, the House so directs; otherwise it goes to one of the five standing committees as directed by the speaker. In any case, the opposition will have rushed in a number of amendments designed to make the measure something different from what was intended by its authors and to force them into a position where they will either have to accept a modified bill that they do not like or withdraw it from further consideration. Committee stage is, of course, the time for discussion of the bill in all its details, and one will not be surprised to learn that such discussion—interspersed, of course, with much business of other kinds—frequently occupies weeks, and even months. After second reading, a bill may, indeed, be referred to a select committee. This does not happen often, but when it does, a step is added to the process; for, after being returned by the select committee the measure goes, as it would have in any case, to the Committee of the Whole or to one of the standing committees. Eventually the bill—unless in the meantime withdrawn—is reported back to the House, amended or otherwise. If reported by a standing committee, or in amended form by the Committee of the Whole, it is considered by the House afresh and in some detail; otherwise the “report stage” is a mere formality.

Third read-  
ing

Finally comes the “third reading.” Although the fate of the bill has by now been pretty well settled and little can be said that has not been said before—perhaps a dozen times—the opposition is reluctant to give up, and a set debate ensues in which the principles of the bill are once more attacked and defended. No further changes, however, except of a purely verbal character, can be made; the bill as it stands (unless sent back to committee) must either be adopted or rejected. The speaker puts the motion “that this bill be now read the third time”; the division is taken; and the result is announced.

The bill in  
the House of  
Lords

If successful, the bill then goes to the House of Lords. Formerly, ministers or other members whose bills had passed the Commons carried them personally to the upper house, often at the head of a sort of triumphal procession of supporters. But since 1855 the method has been for the clerk of the one house to carry the measure to the bar of the other and there deliver it. What fol-

laws need not be related, because, as has been observed, procedure in the Lords is not markedly different from that in the Commons except in being simpler and, as a rule, speedier—mainly because the burden of responsibility for what is done rests more lightly upon the second chamber. After being read twice, measures are commonly considered in committee of the whole, referred to the standing committee for textual revision, reported back, and thereupon adopted or rejected.

A bill which originated in the House of Commons is returned there from the House of Lords, and vice versa, whether or not it has been agreed to. If amendments have been added, the originating house may accept them, in which case the measure becomes law upon receiving the royal assent. But it may also, of course, reject them; and if both houses stand their ground, the bill fails. Two ways of overcoming disagreement have at times been resorted to with success. One is a conference between representatives of the two houses; the other is an exchange of written messages. A conference is a meeting of members, known as “managers,” appointed by their respective houses—by “ancient rule,” twice as many from the Commons as from the Lords. If it is designated a “free conference,” the managers on behalf of the dissentient house present the reasons for their disagreement, and each group tries to bring the other around to its way of thinking, or at all events to hit upon a mode of getting the houses into agreement. If the conference is not “free,” the statement of reasons is presented, but no argument is used or comment made.

Adjustment  
of differences  
between the  
two houses

Far, however, from establishing itself as an indispensable feature of parliamentary life, as has the somewhat similar conference committee in the procedure of the American Congress, the British conference has practically become obsolete. There has not been a free conference since 1836; and as long ago as 1851 the houses, by resolution, decided to receive reasons for disagreement, or for insistence on amendments, in the form of messages, unless one house or the other should demand a conference. So far as formal action goes, the method employed nowadays to bring the houses together is, therefore, the written message, drawn up by a committee of the house which sends it, and borne to the other house, as a rule, by the clerk; and messages may be exchanged *ad libitum*. Practically, however, any

adjustments that are reached are likely to flow, not from this rather stilted procedure, but from informal discussion among the party leaders. The cabinet, indeed, composed as it is of members drawn from both houses, may be regarded as, potentially, a sort of "free" conference, always available as an aid in ironing out differences. Since 1911, it has been possible, of course, for legislation to be enacted without agreement between the two houses at all - financial legislation by a very easy, and other legislation by a longer and more difficult, process. Experience indicates, however, that law-making in this fashion will be rare; and that normally the two houses must be brought into agreement on a bill, or the proposal fails. Recognizing this, and convinced that existing methods of overcoming differences are inadequate, the Conference on the Reform of the Second Chamber, presided over by Lord Bryce, recommended in its report of 1918 that the old method of the free conference be revived.

The royal  
assent

The houses having finally passed a bill in identical form, all that remains is the royal assent - indirectly and perfunctorily given, it is true, but still indispensable. The sovereign may, if he likes, convey it in person. But the thing is now actually done differently, in a manner which Sir Courtenay Ilbert describes vividly as follows: "The assent is given periodically to batches of bills, as they are passed, the largest batch being usually at the end of the session. The ceremonial observed dates from Plantagenet times, and takes place in the House of Lords. The king is represented by lords commissioners, who sit in front of the throne, on a row of arm-chairs, arrayed in scarlet robes and little cocked hats. . . . At the bar of the House stands the speaker of the House of Commons, who has been summoned from that House. Behind him stand such members of the House of Commons as have followed him through the lobbies. A clerk of the House of Lords reads out, in a sonorous voice, the commission which authorizes the assent to be given. The clerk of the crown at one side of the table reads out the title of each bill. The clerk of the parliaments on the other side, making profound obeisances, pronounces the Norman-French formula by which the king's assent is signified: 'Little Peddlington Electricity Supply Act. Le Roy le veult.' Between the two voices six centuries lie." <sup>1</sup>

<sup>1</sup> *Parliament*, 75-76.

Formerly, acts of Parliament were proclaimed by the sheriffs in the counties, but nowadays they are not officially announced to the public in any way whatsoever. Two copies of each measure are printed on special vellum, one to be preserved in the Rolls of Parliament, kept in the Victoria Tower, the other to be deposited in the Public Record Office. The dutiful subject is presumed to know the law, and ignorance of it cannot be pleaded as an excuse for violation. But he is left to find out what it is as best as he can.<sup>1</sup>

Reserving procedure on money bills to be dealt with separately, something may be said, in closing the present chapter, about the handling of private bills and provisional orders. As defined in the House of Commons "Manual," a private bill is one whose object is "to alter the law relating to some particular locality, or to confer rights on or relieve from liability some particular person or body of persons." The object may be to grant a pension or privilege to an individual, but far more frequently it is to empower a municipality or private corporation to build or extend a railroad, construct a tramway, erect a gas plant, lay out a cemetery, dig a canal, or engage in some other enterprise which by its nature involves limitation upon or interference with public or private rights. In the United States, such legislation—especially grants of authority of the kinds mentioned—is enacted extensively by state legislatures and by subordinate bodies like city councils. Congress, however, passes literally thousands of private, or "special," acts (chiefly pension acts) every year. In Britain, where there is nothing corresponding to our states, the national parliament has complete jurisdiction, even though it may, and does, delegate power to deal with matters of the kind to the king-in-council or to executive departments.

Private bills

<sup>1</sup> The procedure of the House of Commons on public bills of a non-financial nature is described briefly in G. F. M. Campion, *op. cit.*, Chap. vi; A. L. Lowell, *op. cit.*, I, Chaps. xiii, xvii, xiv; W. R. Anson, *Law and Custom of the Constitution* (5th ed.), I, 267-280; J. Redlich, *op. cit.*, III, 85-112; and T. E. May, *op. cit.* (13th ed.), Chap. xv. May's work, periodically brought up to date in successive editions, is the standard guide to the whole subject of British parliamentary procedure, but is lacking in the richly historical treatment to be found in Redlich. C. Ilbert, *Legislative Methods and Forms* and *The Mechanics of Law-Making* cover the subject fully and expertly. A. V. Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century* (London, 1905), is an illuminating historical and philosophical survey.

How consid-  
ered

Every private bill must go through the same stages in the two houses as a public bill. That is to say, it must be presented in one house, read a first time, read a second time, referred to a committee, reported, read a third time, sent to the other house to be put through the same processes, and finally given the royal assent which transforms all bills into acts of Parliament. Whereas, however, a public bill can be introduced in either house without any preliminary proceedings beyond the mere preparation of the bill itself, a private bill can be presented only in pursuance of (1) a petition filed with an official of each house known as "examiner of petitions for private bills," and with the government department having most to do with matters of the kind involved, and (2) notification of all owners or occupiers of land required, and of any and all other persons whose interests are likely to be directly affected. Furthermore, there is in each house a special type of committee for the handling of bills of this nature—at any rate, all that encounter opposition.<sup>1</sup> A private bill committee in the Commons consists of four members, and in the Lords of five; and as many such committees are set up during a session as the quantity of business requires. As a rule, each committee receives a considerable batch of bills; and inasmuch as the inquiry on each proposal takes on the character of a quasi-judicial proceeding, with counsel and witnesses to be heard, service on the committees (compulsory under the rules) is a heavy drain on a member's time and energy, without compensating opportunity for personal distinction. Bills reported favorably are practically certain to be passed without discussion by the house receiving the report and thereupon sent to the other branch.

Advantages  
and disad-  
vantages

The British method of handling private bills has two great merits. In the first place, even though it burdens members with much exacting committee work, it greatly economizes the time of the houses themselves. In American legislatures, as also in the French and German parliaments, all such bills are dealt with under precisely the same procedure as public bills. Any member may introduce as many of them as he pleases, and they simply take their chances along with bills of other sorts, often interfering with proper consideration of major public measures, yet with no guarantee that they will themselves receive the

<sup>1</sup> Those that do not are referred, as a matter of form, to a committee on unopposed bills.

attention due them or that those of them that reach passage will be the most worthy. A second point is that private bill legislation, under the British system, is kept entirely outside the realm of party politics. Ministers bear no responsibility for it, and rarely take any part in it, except as they may pass administratively upon proposals brought to the attention of their departments. In Parliament, Conservatives and Laborites are not sent into the division lobbies on the question of whether the London and Northwestern Railway shall be permitted to build some new trackage or the borough of Bury St. Edmunds shall be empowered to operate a gas plant. The whole procedure is based on the sensible idea that the thing to do is to secure careful, dispassionate, non-partisan examination of every project and to let the decision be reached, in effect, by those who have heard the evidence and consulted with the experts. The one objection heard is that the method is expensive for both promoters and opponents of bills; and it is true that in order to get a private bill through—or to defeat one—it is often necessary to hire highly-paid counsel, to pay the travelling expenses of numerous witnesses, and to incur other costs, including a fee which is exacted whenever a private bill is introduced. It may usually be assumed, however, that the privilege sought is worth being paid for; otherwise it would not be sought. At all events, the advantages on other scores undoubtedly overbalance the defect, if it be one.<sup>1</sup>

When, however, a municipality wants to extend a tramway system or erect a hospital, it does not necessarily turn *directly* to Parliament for authorization. In many general statutes dealing with public health, transportation, poor relief, education, finance, and similar subjects Parliament has conferred upon the appropriate government department at London, or in some instances upon a suitable local authority, power to issue "orders" automatically extending specified amounts and kinds of authority to both municipalities and private corporations. Not only that, but such departments and local authorities may anticipate future action of Parliament by issuing "provisional orders,"

Confirmation of provisional orders

<sup>1</sup> The standard treatise on the subject, though old, is F. Clifford, *A History of Private Bill Legislation*, 2 vols. (London, 1885-87). Briefer discussion will be found in G. F. M. Campion, *op. cit.*, Chap. ix; A. L. Lowell, *op. cit.*, I, Chap. xx; C. Ilbert, *The Mechanics of Law-Making*, 132-149; and T. E. May, *op. cit.* (13th ed.). Chaps. xxvi-xxix.

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vantages

The British method of handling private bills has two great merits. In the first place, even though it burdens members with much exacting committee work, it greatly economizes the time of the houses themselves. In American legislatures, as also in the French and German parliaments, all such bills are dealt with under precisely the same procedure as public bills. Any member may introduce as many of them as he pleases, and they simply take their chances along with bills of other sorts, often interfering with proper consideration of major public measures, yet with no guarantee that they will themselves receive the

<sup>1</sup> Those that do not are referred, as a matter of form, to a committee on unopposed bills.

attention due them or that those of them that reach passage will be the most worthy. A second point is that private bill legislation, under the British system, is kept entirely outside the realm of party politics. Ministers bear no responsibility for it, and rarely take any part in it, except as they may pass administratively upon proposals brought to the attention of their departments. In Parliament, Conservatives and Laborites are not sent into the division lobbies on the question of whether the London and Northwestern Railway shall be permitted to build some new trackage or the borough of Bury St. Edmunds shall be empowered to operate a gas plant. The whole procedure is based on the sensible idea that the thing to do is to secure careful, dispassionate, non-partisan examination of every project and to let the decision be reached, in effect, by those who have heard the evidence and consulted with the experts. The one objection heard is that the method is expensive for both promoters and opponents of bills; and it is true that in order to get a private bill through—or to defeat one—it is often necessary to hire highly-paid counsel, to pay the travelling expenses of numerous witnesses, and to incur other costs, including a fee which is exacted whenever a private bill is introduced. It may usually be assumed, however, that the privilege sought is worth being paid for; otherwise it would not be sought. At all events, the advantages on other scores undoubtedly overbalance the defect, if it be one.<sup>1</sup>

When, however, a municipality wants to extend a tramway system or erect a hospital, it does not necessarily turn *directly* to Parliament for authorization. In many general statutes dealing with public health, transportation, poor relief, education, finance, and similar subjects Parliament has conferred upon the appropriate government department at London, or in some instances upon a suitable local authority, power to issue "orders" automatically extending specified amounts and kinds of authority to both municipalities and private corporations. Not only that, but such departments and local authorities may anticipate future action of Parliament by issuing "provisional orders,"

Confirma-  
tion of provi-  
sional orders

<sup>1</sup> The standard treatise on the subject, though old, is F. Clifford, *A History of Private Bill Legislation*, 2 vols. (London, 1885-87). Briefer discussion will be found in G. F. M. Campion, *op. cit.*, Chap. ix; A. L. Lowell, *op. cit.*, I, Chap. xx; C. Ilbert, *The Mechanics of Law-Making*, 132-149; and T. E. May, *op. cit.* (13th ed.), Chaps. xxvi-xxix.



*i.e.*, orders whose ultimate validity is contingent upon subsequent parliamentary confirmation. More and more use is, indeed, being made of such orders. The petitioning individual or body gains by not being held up while awaiting parliamentary action, and Parliament gains, in time and labor, by placing the burden of investigation and tentative decision upon the government department. Provisional orders that have been issued by the departments are grouped each year into a series of "provisional orders confirmation bills," which commonly go through with no opposition, and therefore no debate, just as in the case of unopposed private bills. Should opposition develop, a bill to confirm must go to a special committee; and the houses may end by refusing assent to a grant which a department has provisionally made. Refusal, and even opposition, is, however, very rare; and the increasing use made of the device of orders has, by appreciably lessening the number of private bills to be considered, contributed by so much to a solution of the urgent problem of saving the time, especially of the members of the House of Commons, for consideration of bills of public, nationwide interest.<sup>1</sup>

<sup>1</sup> T. E. May, *op. cit.* (13th ed.), Chap. xxxi.

## CHAPTER XIV

### PARLIAMENT AT WORK: FINANCE

The principal means by which Parliament mounted to its historic position of supremacy was the power of the purse; and to this hard-won possession it still resolutely clings. To be sure, the initiation of financial policy and the management of all details fall to the crown, acting through the cabinet and, in particular, the Treasury. To be sure, too, one branch of Parliament, *i.e.*, the House of Lords, has lost all effective part in financial legislation, for purposes of which "Parliament" has come to mean only "House of Commons."<sup>1</sup> After the ministers, however, have prepared financial plans for a year, they are at the end of their tether until Parliament acts. Independently, they cannot tax, borrow, or spend. Four main things it therefore falls to Parliament to do: (1) to determine—invariably on lines recommended by the ministers—the sources from which, and the conditions under which, the national revenues shall be raised; (2) to grant the money estimated by the ministers to be necessary to carry on the government, and to appropriate these grants to particular ends; (3) to inquire into and criticize the ways in which the funds are actually spent; and (4) to see that the accounts of the spending authorities are examined and properly audited. No taxes may be laid without express parliamentary sanction, and no public money may be spent without similar authority, conferred either in annual or other formal appropriation acts or in permanent statutes. Furthermore, ministers are continuously subject to interrogation on the floor of Parliament concerning the use of public money under their direction; and the accounts of the spending departments and officers are minutely audited—not only by the Comptroller and Auditor-General, who to all intents and purposes is a servant of Parliament, but also by a non-partisan parliamentary com-

Parliamen-  
tary control  
over finance

<sup>1</sup> It is to be recalled, however, that no money bill can become law until the House of Lords has been allowed a month's time in which to act upon it, and that any such bill, even if consented to by the House of Commons only, becomes an "act of Parliament" equally with any measure passed in both branches.

mittee of 15 members (with a chairman drawn from the opposition), *i.e.*, the Committee on Public Accounts—to make sure that the money voted by Parliament for a particular service has been spent upon that service and upon no other.

Such are the fundamental conditions under which the power of the purse is now wielded, not only at Westminster but wherever cabinet government obtains; and our concern in the present chapter is to see how the British Parliament goes about voting taxes and expenditures, *i.e.*, the methods of financial, as distinguished from other, legislation. To do this, it will be best to trace the order of procedure (including the preliminary work of the Treasury) first for appropriation bills and afterwards for bills designed to raise revenue.

Estimates of  
expenditure

We take expenditures first because that is what the government itself does; certainly it is not illogical to find out what is going to be spent before trying to decide how much money to raise or how to go about raising it. The first step, then, in making financial arrangements for a given fiscal year is to prepare the estimates of expenditure. Parliament, however, as we have seen, does not have to make fresh provision for all expenditures every twelve months. Outlays for support of the royal establishment, the salaries and pensions of judges, interest on the national debt, the public expense of conducting parliamentary elections (since 1918), and other Consolidated Fund services or charges, while initially authorized and at all times alterable by Parliament, go on from year to year until changed by new enactment;<sup>1</sup> and this takes care of rather more than one-third of the annual national disbursement. The estimates of which we are here speaking are, rather, for the "supply services"—principally the army, navy, air, and civil services—provision for which is made for but a single year at a time. They apply to outlays which, in amount if not in general purpose, are matters of discretion, or policy, and hence are, and should be, subject to frequent readjustment. It is an inflexible rule that every request for an appropriation shall be submitted to Parliament in the form of an "estimate," *i.e.*, a written statement showing precisely how much money is expected to be needed for a designated purpose, together with a request that the stipulated sum be granted for the purpose specified.

<sup>1</sup> See p. 119 above.

How are the estimates got ready for Parliament's attention? How prepared  
 First of all, matters of general policy that might entail large changes of expenditure, *e.g.*, a housing program, an increase of the army, a naval base at Singapore, are threshed out in conferences between the officers of the Treasury and representatives of the departments concerned, and also, in the case of matters as important as those mentioned, in cabinet discussions. The departments thus get a reasonably definite idea of how far the Treasury is willing to go in support of their projects, and of what outlays can be planned without risk of cabinet disapproval. On October 1 preceding the fiscal year for which the estimates are to be prepared (beginning the following April 1), the Treasury sends a circular letter to all officials responsible for estimates requesting them to make up and submit estimates of the expenses of their departments, offices, or services in the coming year. All are asked to plan as economically as possible, and in particular are admonished not to adopt the easy method of simply taking the estimates of the past year as the starting point for those of the next. The responsible officers of the departments thereupon set their staffs to compiling and entering figures, using forms sent out from the Treasury on which comparative data have already been entered. At all stages of the work, close contact is maintained with the Chancellor of the Exchequer and other Treasury officials; the rules, indeed, require that, in so far as possible, additions, omissions, or other alterations of the existing arrangements shall be referred to the Treasury before the departmental proposals as a whole are formally presented. If the Treasury demurs, the department may appeal to the cabinet. But such appeals are rarely made unless the question is one of exceptional importance; and there is a strong presumption that the cabinet—which, as a matter of fact, never itself considers the estimates for a given year in their totality—will back up the Treasury in any position that it takes. The result is, as one writer puts it, that the estimates, when finally submitted by the departments, “represent little more than the statement of proposals that have already been agreed upon between the various submitting departments and the Treasury.”<sup>1</sup> The sum total of these estimates as finally

<sup>1</sup> W. F. Willoughby *et al.*, *Financial Administration of Great Britain* (New York, 1917), 61. It must not be inferred, however, that the Treasury's rôle is an easy one.

approved by the Treasury, added to the amounts required for Consolidated Fund services, gives the expenditure which will have to be met out of the revenue for the year if no deficit is to be incurred--and if no unanticipated demands arise.

Treasury  
control

Ordinarily, all estimates of expenditure, in complete form, are in the Treasury's hands by January 15; whereupon the estimates clerk, making sure that there is nothing in them which the Treasury has not approved, has them printed in three huge quarto volumes. No estimate from a governmental source can by any chance reach Parliament unless it has the Treasury's endorsement. And this is as good a point as any at which to note the very important farther fact that no request or proposal, from *any* source, looking to a charge upon the public revenue will be received or given attention in Parliament unless the outlay is asked or supported by the crown, which in effect means the Treasury. This rule, first adopted by the House of Commons in 1706, and made a standing order in 1713,<sup>1</sup> totally prevents private members from introducing appropriation bills or resolutions, *i.e.*, from moving that a specific sum be granted for a specific purpose; although it is not construed to prohibit non-ministerial resolutions favoring or opposing some specified kind of expenditure on general principles; and it averts most of the evils which are associated in the United States with the idea of the congressional "pork-barrel." The House of Commons can determine the amount of money that will be granted and the sources from which the money shall be drawn. But it has denied itself the privilege of deciding whether any money shall be granted at all, unless the proposal for a grant emanates from the crown.

Parliament opens a new session at the end of January or the

A generation ago, the burden of proof rested so clearly on the spending departments that the Treasury officials could refuse applications almost without giving reasons. Nowadays, the onus is rather on the Treasury to justify its refusal; "the hand of every man is against the Treasury." It may be added that the army, navy, and air services are allowed far more leeway in making up their requests than are the various branches of the civil service. The most convenient account of the preparation and submission of the estimates is Chap. iii of the volume mentioned above.

<sup>1</sup> Standing Order 66. The rule now reads as follows: "This House will receive no petition for any sum relating to public service, or proceed upon any motion for a grant or charge upon the public revenue, whether payable out of the Consolidated Fund or out of money to be provided by Parliament, unless recommended from the crown." In practice, the rule is applied also to proposals for taxation.

beginning of February, and as a rule the estimates of expenditure, in accordance with formal announcement made in the speech from the Throne, are presented to the House of Commons during the first two weeks thereafter—the estimates for the civil service and revenue departments by the Financial Secretary to the Treasury, those for the army, the navy, and the air force by the Secretary of State for War, the First Lord of the Admiralty, and the Minister for Air, respectively. On an early day, agreed upon at the beginning of the session, the House resolves itself into Committee of Supply, which, as has been explained, is a committee of the whole, sitting under the presidency of the chairman of committees or his deputy. From the reign of James I until 1912, the estimates of expenditure could be considered only in Committee of Supply. In the year mentioned, provision was made for reference of some of them to a select, and in 1919 of most of them to a standing, committee. Neither plan, however, established itself, and nowadays they are once more handled exclusively in Committee of Supply, colloquially known as House in Supply. After the committee has engaged in a brief preliminary debate on “grievances”—which once was important, but is now meaningless since Parliament holds the remedy for grievances in its own hands—the estimates are taken up for such scrutiny as time permits, and with a view to the adoption of resolutions which can be reported back to the House as the basis for appropriation bills. Twenty days only are allowed for the purpose, scattered through the session; and under the present rules this business is made the first order of the day on Thursdays of successive weeks.

Consideration by the House of Commons

The estimates are considered in separate groups termed “votes”—some 150 in all—corresponding as closely as possible to distinct services, and divided into subheads and items to facilitate rapid scrutiny and definite discussion.<sup>1</sup> Each “vote” becomes the basis of a “resolution of supply,” which is adopted in committee and duly reported to the House. There is not time to consider all the votes before April 1; and yet the government must have authority by that date to spend something under practically every vote.<sup>2</sup> Accordingly, the first thing done is to

“Votes on account”

<sup>1</sup> On the character and form of the estimates, see W. F. Willoughby *et al.*, as cited, Chap. iv.

<sup>2</sup> Unused portions of grants for the previous year lapse on March 31.

pass resolutions giving the government provisional authority to spend a limited sum under every vote, without committing Parliament to grant, at the end, the total amount asked for. This provisional authority is known as a "vote on account." In the cases of the civil service and the army, sums are allowed under every vote which are calculated to be sufficient to carry the services along for four and a half or five months. In the cases of the navy and the air force, one or two of the larger votes are put through in full, which suffices for a time for the entire service, inasmuch as in each of these establishments money granted under one vote can be employed under any of the other votes—that is to say, can be used for the navy or air force as a whole as long as the sum holds out. In this way the government finds itself on April 1 armed with provisional authority to spend on the supply services sums sufficient to last until about the following August, when the session will end. Legally, the authority is strictly provisional; no appropriations, in the proper sense of the word, have yet been made, and the resolutions that have been passed will have no validity beyond the end of the session.

Furthermore, this authority to spend does not of itself carry authority actually to draw the money from the Consolidated Fund. This particular authority comes by virtue of resolutions passed in another committee of the whole, known as the Committee of Ways and Means, whose function is two-fold: (1) to authorize issues from the Consolidated Fund, and (2) to consider proposals for raising money, whether by taxes or by loans. At an early stage of the session the House also begins to sit from time to time as Committee of Ways and Means; and by April 1, when the government must begin to draw upon the Exchequer for the expenses of the new fiscal year, the committee has reported to the House resolutions "granting ways and means" (including provisions for necessary temporary borrowing) which have been incorporated in a bill and passed as a Consolidated Fund (No. 1) Act. The "ways and means" thus granted always equal the total of the votes of supply thus far provisionally adopted, plus any supplementary votes that may have become necessary for the expiring year and any excess votes for the previous year.

Accordingly, the government enters upon the fiscal year with

(1) expenditures authorized in amounts adequate—barring the unexpected—to carry the services up to August, and (2) access to funds sufficient to last to the same approximate date. It remains to fill out the fiscal schedule, so to speak, and make it definitive for the entire year. And to this task the Committee of Supply, the Committee of Ways and Means, and finally the House as such devote themselves from time to time throughout the remainder of the session. In the case of estimates of expenditure, it is simply a matter of pursuing consideration of them further with a view to fixing the final and exact amounts to be allowed. One or two additional Consolidated Fund acts are likely to be passed, between April and August, giving the government further access to funds; and at the very end of the session, after ways and means for the year have been definitely determined, all such measures enacted up to that time are gathered into a general Consolidated Fund (Appropriation) Act, commonly known simply as the Appropriation Act, which (1) prescribes the appropriation of all sums carried by the votes in supply, and (2) authorizes the issue of a sum from the Exchequer equal to the total of these votes and gives the Treasury temporary borrowing powers up to the whole of the amount. Standing Order 15 requires that consideration of the estimates of supply shall be completed not later than August 5.

The appropriations completed

At no time while these estimates are under consideration can a private member move an increase in a vote, for to do so would violate the rule which requires all proposals for expenditure to emanate from the crown. Such a member may, however, move a reduction. The Committee of Supply can vote the grant asked of it in full, reduce it, or refuse it altogether. It cannot increase it, annex a condition, or alter its destination; although it may be able to induce the government to substitute a revised estimate. Since, as has been noted, the rules of the House allow only 20 days in all for the debates in Committee of Supply, it invariably happens that most of the time is consumed on a few "votes," not necessarily the most important ones, and that many are passed with only the most perfunctory scrutiny and with no discussion whatever.<sup>1</sup>

All this, however, tells only a part of the story of how

<sup>1</sup> Three "allotted" days, however, may be added by vote of the House, with consent of the cabinet.



Estimates of revenue arrangements for a coming fiscal year are made. It is true that the first thing undertaken is to compile estimates of expenditure. But this work will not have been going on long before attention will be directed also to the matter of probable revenue; and even before the estimates of outlay reach the Treasury in their matured form they are not unlikely to have been trimmed down because the word has been passed around that the funds in sight will not bear such charges as were originally contemplated. For the estimates of revenue, the Treasury is responsible, even more directly and completely than for estimates of expenditure; indeed, from first to last they are the handiwork of the Treasury itself. While the multifold and scattered spending offices are at work on their figures for the coming year, the revenue departments in the Treasury—chiefly customs and excise, inland revenue, and post office—are making the best guesses that they can as to the amount that each source, *e.g.*, land taxes, the income tax, stamp duties, death duties, the postal service, and what not, will yield, and the Chancellor of the Exchequer and his assistants are balancing off prospective outgo against prospective income and working out plans by which, if given parliamentary approval, ends can probably be made to meet. If, by happy chance, the revenues promise to exceed what will be required, the Chancellor (in consultation with the cabinet) may decide to recommend a lowering of the income tax, or of the tea duty, or even the remission of certain taxes altogether. But if, as is much more likely to be the case, the outgo promises to mount higher than the income, even after all feasible economies have been determined upon, it becomes necessary to decide what existing taxes shall be pushed upward, and how far, and what new imposts, if any, shall be laid. In reaching these decisions the ministers may be actuated, of course, not solely by the desire to raise more money, but by the purpose to shift the tax burden in this direction or that, in the interest of social or economic changes which they have at heart. Indeed, the whole policy of a government may be wrapped up in the tax proposals that it carries to the House of Commons.<sup>1</sup>

<sup>1</sup> One recalls in this connection the tax proposals embodied in the historic Lloyd George budget of 1909. Other illustrations include the repeal of the corn laws, the revival of income taxes, and the general adoption of free trade during the period 1841-60. Had Mr. Baldwin's protectionist proposals won at the general election of 1923, the scheme of taxation which they contemplated would presently have

Early in the session at which the estimates are to be considered comes one of the big occasions in the parliamentary history of the year, *i.e.*, "budget night." The House of Commons resolves itself into committee of the whole on ways and means; and, with a huge pile of carefully arranged typewritten documents before him—the benches being crowded with members and the galleries with spectators—the Chancellor of the Exchequer unfolds the government's proposals. He reviews the finances of the past year, tells what outlays are to be provided for and what revenue is to be expected, touches on the condition of the national debt, and then, to an audience growing in eagerness (it already knew, at least in a general way, about these things, but it has hardly an inkling of what is now to come) discloses the increases or decreases of old taxes and the nature and extent of the new taxes provided for in the government's fiscal program. Small wonder that the "budget speech" is always interesting, sometimes surprising, and occasionally startling. Rarely in times past did the speech consume less than three hours; sometimes it ran to twice that length. "Spoke 5-9 without great exhaustion," recorded Gladstone in his diary following his budget speech of 1860, "aided by a large stock of egg and wine. Thank God! Home at 11. This was the most arduous operation I have ever had in Parliament." Inasmuch as the Great Commoner was called upon to introduce, or "open," at one time or another, thirteen different annual budgets, it was well for him, as for his hearers, that he had the knack, as some one once remarked, of "setting figures to music."

The budget

Nowadays, the budget speech is likely to be shorter, because it has come to be only a general announcement, or explanation, preliminary to placing the budget itself, in printed form, in the hands of the members. Filling, as a rule, only a few printed pages, the document known technically as the budget does not look very formidable.<sup>1</sup> It is buttressed, however, by masses

Revenue proposals before the House of Commons

made its official appearance in connection with the government's estimates, *i.e.*, in the annual budget.

<sup>1</sup> Historically and accurately, the term denotes only the Chancellor's exposition of the state of the finances and the measures rendered necessary thereby—in other words, the Chancellor's speech. In everyday parlance, however, it is often applied to the whole annual plan of finance. The word is derived from *hougette*, an old English term for a small bag or pouch, and seems to have come into use in its present sense in the early eighteenth century. A pamphlet of 1733 entitled *The Budget* opened satirically pictures Robert Walpole, when explaining his financial program.

of statistical and other matter that challenge the industry of any person who would really comprehend it. The essence of a budgetary system is, of course, the careful consideration, at one and the same time (or at least in their relations to each other), and by the same body of men, of both sides of the national account, first by those whose business it is to initiate fiscal proposals, and afterwards by the legislature that votes them; and in the House of Commons the proposals relevant to revenue (including loans) are dealt with, not only by the same general procedure as those for expenditures, but throughout the same general period of time. The proposals are debated serially in committee of the whole (*i.e.*, Committee of Ways and Means) and, after adoption—as originally proposed, or as amended—in the form of resolutions, are reported to the House and passed as bills. Private members may not move new taxation, although they may move to reduce taxes which the government has not planned to alter, or to repeal them altogether. A further interesting feature of the system is that, formerly by mere custom but since 1913 by law, increased or otherwise altered income, customs, and excise taxes proposed in the budget speech, and tentatively approved in ways and means resolutions passed immediately, become operative on the morning following the delivery of the speech. If the proposals are not definitely adopted within a period of four months, the money collected has to be returned to those who paid it. Only very rarely, however, does this situation arise. The practice is a striking illustration of the strong presumption that exists in favor of the ultimate enactment of whatever proposals, especially in the domain of finance, the government carries to the floor of the Commons.

Appropriation Act and Finance Act

The results of the whole fiscal operation as described finally emerge in two great statutes, *i.e.*, the Appropriation Act, already mentioned, and the Finance Act. The first of these, as we have seen, definitely authorizes all of the grants that have been made for the services to be paid out of the Consolidated Fund; and it is passed by the House on the basis of resolutions reported back to it partly from the Committee of Supply, and partly also from the Committee of Ways and Means. The Finance Act,

as a quack doctor opening a bag filled with medicines and charms. "Opening the budget" is still a common phrase.

based upon resolutions reported from the Committee of Ways and Means, reimposes existing taxes at the rates newly agreed upon, remits taxation if it has been so decided, and provides such new or additional revenues as the necessities of the situation require. As in the case of appropriations, taxes are not freshly authorized in full every year. Indeed, whereas most expenditures are thus authorized, most taxes (something like 60 per cent, in terms of yield) are not, being based on permanent statutes which are always subject to repeal or alteration but do not need to be renewed annually. Thus, "death duties" (*i.e.*, inheritance taxes), stamp duties, most customs duties, and certain excises are imposed by continuing statutes. For many years the imposts that were regularly reserved for annual readjustment, with a view to balancing the budget, were the tea duty and the income tax—the one an indirect levy resting on the mass of the people and the other a direct tax regarded as levied upon property. In the early years of the present century, however, it became the usual thing to deal with the customs duties on tobacco, beer, and spirits, in the same fashion. In earlier times, it was the habit to include in the Finance Act only the provisions for the annual and temporary taxes; the permanent taxes, and special arrangements regarding particular taxes, were provided for in separate acts. Nowadays, however, as we have seen, it is customary to include in the act all fiscal regulations for the year relating both to revenue and to the national debt.

All finance proposals make their first appearance in the House of Commons. Those that are approved by that body, however, must invariably be submitted also to the House of Lords, which in former times must pass them, equally with the popular chamber, if they were to become law. Since 1911, the concurrence of the Lords has not been necessary. Any bill affirmed by the speaker of the House of Commons to be a money bill, if sent to the Lords at least one month before the close of the session, is submitted for and duly receives the royal assent, and thereby becomes law, whether or not consented to—or even considered—by the upper chamber.

Money bills  
sent to the  
House of  
Lords

The British system of handling financial legislation has long been held up as a model throughout the world, and has been widely imitated. It undoubtedly has many excellent features.

American fi-  
nancial legis-  
lation com-  
pared

Above all, it guarantees a financial program which has been prepared as a unit and for which full responsibility rests upon a single authority, the cabinet. Notwithstanding large advance in budgetary matters in recent years, the financial activities of the government of the United States still lack an equal degree of coherence and definiteness of responsibility. It is true that under the Budget and Accounting Act of 1921 the director of the budget at Washington receives all estimates of expenditure from the several departments, boards, and commissions and works them into a coördinated fiscal plan, to be presented to Congress on the sole responsibility of the president. But after the two branches have come into possession of the plan, each in its turn may introduce any changes that it desires, increasing appropriations here, reducing them there, and even inserting items altogether new; so that by the time when the appropriation bills finally emerge as enacted measures they may be far from what the executive intended, and responsibility for them quite impossible to fix. To make matters worse, proposals for raising revenue—which may originate with the executive, but may also be introduced by any member of the House of Representatives on his own initiative—are still considered, in both branches, by committees entirely distinct from those that have to do with appropriations, often resulting in a working at cross-purposes which is totally foreign to the British House of Commons, where revenue and appropriation proposals are considered by committees (of the whole) which are indeed distinct in name but absolutely identical in personnel. Still further, whereas in Britain the ministers whose financial program is being submitted to Parliament may follow it there and, as members, explain and defend it on the floor, in the United States the executive, after having once transmitted the annual budget, has no opportunity to give it support except by messages, conferences, appearances of the Secretary of the Treasury before committees, and other more or less indirect methods. There is considerable demand in America for a budgetary procedure that will come a good deal closer to the British—one that will enable the executive to have spokesmen present in the financial sittings of the houses, and that will prevent Congress from appropriating money not asked for by the executive, or, at all events, will give the president power to veto separate

items inserted in appropriation bills contrary to executive judgment.<sup>1</sup>

It would be a mistake to infer, however, that the British system is faultless, or that every Britisher is satisfied with it. On the contrary, much criticism is heard, along with discussion of possible improvements. The system may be said to have the defects of its merits. It is coherent, integrated, and expeditious; but it is so because Parliament, while maintaining satisfactory arrangements for auditing, and still giving reasonably adequate attention to questions of taxation, has largely abdicated, in favor of the cabinet,<sup>2</sup> that control over expenditure and over larger matters of financial planning which the legislature, under popular forms of government, is supposed to exercise. Analyzed somewhat more closely, the situation presents four main difficulties. The first is the restricted and inadequate nature of the financial information given to Parliament, voluminous though it is. The budget figures faithfully present a "cash account": what has come in; what is expected to come in during the succeeding year; what has been, and what is intended to be, paid out. They do not reveal the relations of these data to the fiscal operations of other years, in respect to such matters as arrearages and the payment of taxes in advance. Nor do they distinguish items of dead expense, *e.g.*, for war, from others that are in the nature of investments, *e.g.*, the purchase of equipment for the state-owned telegraph and telephone systems. In short, they fail to put the general run of members in a position to take a long view of the country's financial condition, and thus to comprehend the government's fiscal plans in all of their ramifications and bearings.

A second difficulty is the altogether inadequate amount of time available in the House of Commons for consideration of budgetary matters, especially on the side of expenditures. The total time allowed to appropriation proposals is but 20 days (which can never be extended more than very slightly), scattered over a period of some six months. For a national outlay reaching the stupendous total of £800,000,000 a year, this is palpably

Shortcomings of the British budgetary system:

1. Incompleteness of financial information given to Parliament

2. Lack of time

<sup>1</sup> F. A. Ogg and P. O. Ray, *Introduction to American Government* (4th ed.), Chap. xxvi; W. F. Willoughby, *The National Budget System* (Baltimore, 1927); C. G. Dawes, *The First Year of the Budget in the United States* (New York, 1923).

<sup>2</sup> One might almost say, rather, the Treasury.

3. Unwieldiness of committee of the whole

insufficient. Many "votes," carrying millions of pounds, pass entirely undebated. Furthermore, the House of Commons, sitting as committee of the whole, is too large a body to consider the estimates satisfactorily. Its deliberations must perforce take the form of slow and rather general debate; it cannot focus attention for days on some particular proposal that has been challenged, call in witnesses and experts, and conduct a searching study of the matter such as would be possible for a more compact and leisurely committee.

4. Political implications of budget discussions

Most important of all, perhaps, is the fact that there is next to no discussion upon the merits of financial proposals as such. These proposals have come from the government, and the government's supporters feel it incumbent upon them to accept and uphold them as necessary and proper; otherwise they will seem to be inviting embarrassment, and perhaps disaster, for the ministry and the party. On the other hand, the proposals are viewed by the opposition as furnishing just so many opportunities for ventilating grievances and bringing the political policy of the government under critical review. If, therefore, a vote is challenged or a reduction moved, the matter tends instantly to become one of confidence, and the debate proceeds accordingly. What should be free discussion simply upon the desirability of holding to or altering the government's estimated figure becomes a debate, on party lines, of the whole sweep of government policy. Few economies, therefore, are introduced from the parliamentary side; no one expects much in this direction. Members of the party in power will not embarrass the government by urging them, and with rare exceptions, will feel duty bound to vote them down when advocated by the opposition. The latter will let most of the majority proposals go through without challenge, concentrating its fire on a few here and there which offer most inviting chances for publicly putting the ministers on the defensive. Of dispassionate, straightforward, constructive financial criticism there is very little.

Power of the purse passes to the cabinet

The result is that, save on rare occasions, parliamentary control is largely a matter of form. The House of Lords no longer has power even to hold up, much less to prevent, the adoption of money bills; the House of Commons, shorn by self-denying ordinances of the right either itself to originate proposals for expenditure or to increase the proposals submitted to it by the

crown, normally assumes that the government knows best what is needed and accepts whatever proposals are offered; and while the popular branch has the right to reduce the amounts called for, or even to refuse to make any grant at all, the conditions that have been described leave it poorly equipped to exercise this power with much intelligence and impartiality. "It is not surprising," said a select committee which investigated the subject in 1917-18, "that there has not been a single instance in the last 25 years when the House of Commons by its own direct action has reduced, on financial grounds, any estimate submitted to it. . . . The debates in Committee of Supply are indispensable for the discussion of policy and administration. But so far as the direct effective control of proposals for expenditure is concerned, it would be true to say that if the estimates were never presented, and the Committee of Supply never set up, there would be no noticeable difference."<sup>1</sup> Responsibility for preventing extravagance, therefore, falls almost entirely upon the executive, rather than the legislature—primarily, of course, upon the officials of the Treasury. Fortunately, the means provided for such protection are effective, and little extravagance results. The fact cannot be got round, however, that to all intents and purposes, the power of the purse is no longer in Parliament but rather in the cabinet.

Realization of this situation has long made members of the House of Commons uncomfortable. Forty years ago, the body began setting up select committees to study the problem, but without avail. One such committee, appointed in 1902 to inquire whether any plan could be adopted for enabling the House "more effectively to make an examination, not involving criticisms of policy, into the details of national expenditure," recommended, among other changes, the creation of a select committee on estimates, which, without any power of direction or control, should each year make a detailed investigation of estimates, organization, methods, and activities of some one service or group of services and report its findings to Parliament. No action was taken until 1912. In that year the House set up a select committee on estimates, charged with examining, at each session, such of the estimates presented to the House as it should

Experiments looking to more effective parliamentary control: select committees on estimates

<sup>1</sup> *Ninth Report of the Select Committee on National Expenditure, 1918* (House of Commons), 124.



see fit to take up, and with reporting any possible additional economies which it discovered. Though lacking an adequate technical staff, the committee worked diligently and intelligently. In 1912 it dealt with some civil service votes, in 1913 with navy votes, and in 1914 it began on army votes. Its labors were, however, too slow, and too much cramped by the limitations imposed by the House, to be of much value; and after a time it was allowed to lapse.

The World War ran the nation's expenditures up to unprecedented figures, and parliamentary control became even more of a fiction than before. Accordingly, in 1917 another select committee was set up to study the problem. A year later it presented an interesting series of reports, recommending, chiefly, (1) more active financial supervision over the departments by the Treasury, (2) the appointment at the beginning of each session of Parliament of two committees on estimates, of 15 members each, charged with examining the estimates with a view to discovering and suggesting economies, and (3) acceptance all round of the principle that a motion carried in Committee of Supply in pursuance of the recommendations of the estimates committees should not be taken to imply that the government of the day no longer enjoyed the confidence of the House.<sup>1</sup> The committee's proposals have borne less fruit than was hoped, but they at least have led to a revival of the experiment of 1912-14. In 1920, one select committee on estimates was set up, with authority to examine any estimates submitted to the House and "report economies consistent with the policy implied in those estimates"; and a committee of this nature has existed in every session since. All estimates, it should be observed, continue to be passed upon by the House in committee of the whole. The select committee merely supplements the hurried work of that agency by looking into the estimates for two or three departments every year and raising questions about possible savings, the regrouping of items, and similar matters. Even so, it has justified its existence.

#### Obstacles

The suggested agreement under which amendments offered by members, when the House is sitting in supply, should be regarded, not as expressions of want of confidence in the min-

<sup>1</sup> *Parliament and the Taxpayer* (London, 1918), by E. H. Davenport, who participated in the work of the select committee, is a vigorous discussion of the matters dealt with in the reports.

istry, but merely as business proposals to be considered in a business-like rather than a partisan spirit, has much to commend it. Ministers, however, have no enthusiasm for it (just as they have no enthusiasm for any plan under which the estimates would be sent off to special or standing committees, as they are in France, the United States, and elsewhere); for, obviously, if the principle were once admitted, the cabinet's present dominant position in financial matters would come to an end, or at all events be seriously impaired. The greatest single factor in the ascendancy of the cabinet in public affairs today is the almost positive assurance which it enjoys that its financial program, year in and year out, will ride through at Westminster substantially unaffected by criticism and amendments. Ministers are not always unwilling to accept alterations suggested, by friend or foe, in committee of the whole; indeed, they habitually frame their proposals in accordance with what they understand to be the parliamentary and national temper. As a rule, they will not press an issue to the point of stirring up serious antagonism. But they would not relish a state of things under which their finance bills would be in danger of emerging from Parliament emasculated and unrecognizable, or such that their fellow-partisans at Westminster would feel equally free with the opposition to offer and urge different plans from those which the Treasury had stamped with its approval. Hence, the problem remains. Cabinet government is generally conceded to be one of the crowning glories of the British constitution. Englishmen cannot, however, help wondering occasionally whether, in the domain of finance, it has not to some extent overreached itself.<sup>1</sup>

<sup>1</sup> Up-to-date accounts of procedure on money bills include G. F. M. Campion, *op. cit.*, Chap. viii, and J. W. Hills and E. A. Fellowes, *British Government Finance*, Chaps. ii-iii. Older, but still useful, descriptions include A. L. Lowell, *op. cit.*, I, Chap. xiv; J. Redlich, *op. cit.*, III, 113-158; and T. E. May, *op. cit.* (13th ed.), Chap. xviii. Cf. article "Budget" by W. F. Willoughby in *Encyc. of the Soc. Sci.*, III, 38-44.

## CHAPTER XV

### PARLIAMENTARY GOVERNMENT—TENDENCIES AND PROBLEMS

Readers of the foregoing chapters will be prepared to be told not only that Parliament is continually reorienting itself in relation to the other parts of the government, but that from its present character and position spring some of the most challenging problems of the day. Before turning from the subject, it will be helpful (1) to bring to view some recent developments and tendencies, (2) to summarize existing grounds for dissatisfaction and complaint, and (3) to comment on one or two main proposals for change.

Power of  
Parliament—  
theory and  
fact

No principle of the English constitution is more firmly established than that Parliament is a sovereign and omnipotent authority. As such, it has power to make and repeal laws on any and all subjects, to lay any kind of a tax and sanction any form of expenditure, to call ministers to account and drive them from office, to remake the constitution and alter the form and methods of government in any conceivable direction. What Parliament, however, may do as a matter of law and what it may do as a matter of practice are two very different things. Actually, Parliament has never been, and certainly is not now, omnipotent. In the workaday world in which it functions, it finds its hands tied, no longer by a jealous monarch to be sure, nor yet by tribunals wielding the club of judicial review, but by plenty of other effective instrumentalities and forces. As new fields of governmental control are opened up by scientific invention, *e.g.*, radio communication and aerial transportation, or by changing conceptions of the limits to which it is desirable for public regulation to be carried, it does, indeed, take on new duties and tasks. But precedent keeps it in established channels; inertia supplies an added brake; public opinion holds it in tether; congestion of business imposes restraints. Indeed, the day-to-day control of Parliament over the affairs of the nation seems to be steadily diminishing. Nearly every observer agrees, not only that the

two houses, along with parliaments generally, have of late declined in prestige, but that they are no longer the dominating, controlling authority in the state that they were back in the mid-Victorian era. Amid shifts and changes in the practical operations of government, even the House of Commons has fallen to a position of less actual power than it once enjoyed.

Let us see what has happened. To begin with, Parliament's relation to the electorate—the people back home—has developed on such lines as to result in considerably less freedom of action, for commoners at all events, than a hundred, or even fifty, years ago. Time was when the houses, sitting at Westminster, were not much in the public eye. There were no telegraphs or telephones; newspaper service was slow and scant; people travelled but little; public opinion—outside of the capital at all events—had small opportunity to form or function. Now, all is different. As Lowell remarks, “a debate, a vote, or a scene that occurs in Parliament late at night is brought home to the whole country at breakfast the next morning, and prominent constituents, clubs, committees, and the like, can praise or censure, encourage or admonish, their member for his vote before the next sitting of the House.”<sup>1</sup> Parliament works today in the glare of pitiless publicity, which may be a good thing, but certainly puts a damper on the spontaneity and freedom with which it acts. The increased size of the electorate serves as another deterrent; it costs more to be elected than formerly, and members are in proportion hesitant about supporting any measure or policy likely to start a back-fire in the constituencies. More members than ever before are the servants of trade unions, coöperative associations, or other special groups or interests, and take orders from these instead of acting according to their own independent judgment. And the idea that decisions involving major matters of policy ought not to be arrived at until the nation has had an opportunity to express itself on them at a general election has made at least enough headway to put the two houses under a certain amount of added restraint. In a word, Parliament must nowadays keep its ear to the ground and be guided by what it hears, or thinks it hears, to a far greater degree than in earlier times.

Changed relation to the electorate

This is important. Even more so, however, is the growth of the power of the cabinet at Parliament's expense. Under the

Control by the cabinet:

<sup>1</sup> *Government of England*, I, 425.

theory of the parliamentary system, the ministers composing the cabinet should be concerned primarily with carrying on the government on lines laid down more or less minutely at Westminster, and should be directly, continuously, and effectively responsible to a masterful House of Commons for everything done by or through them. But one does not find this to be the actual situation. Parliament's control is far more tenuous; the cabinet's initiative and self-sufficiency decidedly more extensive. Consider first the matter of legislation. A hundred years ago, the cabinet as such had relatively little to do with the processes of law-making. Even then, the ministers were, with few exceptions, members of Parliament. But their duties were chiefly administrative, and they bore no disproportionate share in the legislative activities of the houses. Now, all is different. They write the Speech from the Throne which lays down the legislative program for a session; they decide what matters shall occupy the attention of the houses, prepare the bills on these subjects (with no opportunity for non-ministerial members to participate in preliminary discussions), introduce them, explain and defend them, push them to enactment, take full responsibility for them both before and after they are passed, and throw upon the House of Commons the onus of upsetting the government and very likely precipitating a general election if any of their important measures are emasculated or rejected. They demand, and obtain, most of the time of the houses—all of it in the House of Commons after a certain stage of the session is reached—for the consideration of the measures in which they are interested. They crack the whip of party loyalty over the heads of their supporters on the benches and make it next to impossible for even the ablest and most spirited among them to question publicly, much less to vote against, the proposals upon which Whitehall has resolved.

The upshot is both obvious and significant. "To say," remarks the American writer who has made the closest study of the subject, "that at present the cabinet legislates with the advice and consent of Parliament would hardly be an exaggeration; and it is only the right of private members to bring in a few motions and bills of their own, and to criticize government measures, or propose amendments to them, freely, that prevents legislation from being the work of a mere automatic majority."<sup>1</sup> Law-making, as

1. In legislation

<sup>1</sup> A. L. Lowell, *op. cit.*, I, 326.

another writer observes, has been "annexed by the government." To be sure, the houses still have a good deal of opportunity to discuss larger phases of public policy, and it is at this point that they nowadays do their best work. Yet even here the cabinet ordinarily has the great advantage of formulating the problems and setting the stage for debate; sometimes it has so far committed the country to a given course of action that there can be no backing down without stultification; and since questions of policy are almost invariably considered on party lines, the ministers usually have only to convince and satisfy their own pledged supporters. Like most legislatures in cabinet-government countries today, Parliament does not initiate or create, but merely accepts and registers, policy.

In the broad field of finance, control by the ministers is more absolute still, because, as we have seen, the House of Commons will give no consideration at all to any request for money that does not come from, or at all events with the express approval of, the crown. Indeed, its consideration of even these proposals is often a mere matter of form. Granting of supply has so far lost its earlier importance as a check of the legislature upon the executive that millions of pounds are voted every year with no debate whatever, even in committee of the whole. It is true that most of the restrictions mentioned arise from rules which the House of Commons has itself made, and that they could be thrown off by simple amendment of the standing orders. But the point is that even these regulations—including the whole body of rules relating to closure—have, in effect, been dictated by the cabinet, which could be depended upon to offer successful resistance to any effort to relax them.

2. In finance

What of Parliament's relation to the executive and administrative work of the government? Here, less startling changes are to be recorded, because at no time in the past has Parliament either actually or theoretically wielded such direct control as in the domain of legislation. Even in this field, however, the tendency has been in the same direction. Most cabinet members are principal officers in the great executive departments. As ministers, their business is to supervise the work carried on in and through these departments; and ever since the cabinet system assumed its matured form, their direct and full responsibility to the House of Commons for all their executive actions has

3. In administration

been accepted as axiomatic. The theory is that the ministers are responsible to the elected chamber for all that they do, singly in small or isolated matters, collectively in more important ones; that their acts are constantly subject to inquiry and criticism; and that the great powers which they wield can be stripped from them at any time by the simple withholding of support. There are, furthermore, several recognized methods by which this responsibility can be asserted and enforced; and some mention of them may well be made before comment is ventured upon the extent to which the ministers' executive work is actually controlled.

Methods of  
enforcing  
ministerial  
responsibility:

... Questioning  
of ministers

First—starting with the mildest—is the device of the “question.” Subject to conditions, any member of the House may address a query to a minister, actually or ostensibly to obtain information. The principal conditions are (1) that every such question shall be addressed to that minister in whose province the subject-matter of the inquiry falls, (2) that notice shall be given at least one day in advance, (3) that the query shall contain no “argument, inference, imputation, epithet, or ironical expression,” (4) that it must not have been disapproved by the speaker as improper, (5) that it must not relate to statements made by members outside the House, and (6) that no member may submit more than four questions on any one day. Until three-quarters of a century ago, the right of questioning ministers was not much used, but nowadays the number of questions put to them at every session runs into the thousands; and, as we have seen, “question time” is a regular, and usually an interesting, portion of every daily sitting. Sometimes the questions have no object whatever except to elicit information; and the questioner may be entirely satisfied by what he hears. They may come from the minister's political friends no less than his foes. More often, however, they are intended to imply criticism, and to place the minister and his colleagues on the defensive. It is the minister's privilege to decline to answer if he likes; all he needs to say is that to reply would be contrary to the public interest. But arbitrary or too frequent refusal will, of course, tend to create an unfavorable impression. The process of answering questions, as Lowell remarks, gives to the Treasury Bench an air of omniscience not wholly deserved, because, the queries having been put on the “question paper”

in advance, opportunity has been given for the minister's subordinates to look up the matter and supply him with the necessary data. In most cases all that the minister has to do with the replies is to read them to the House, although after he has finished members may aim "supplementary questions" at him from the floor, and it behooves him to have as much personal familiarity with the matter as he can muster.

The question privilege is undoubtedly liable to abuse; the questioner is sometimes actuated by no very lofty motive, and a good deal of time is consumed on trivial matters. As an English authority testifies, however, "there is no more valuable safeguard against mal-administration, no more effective method of bringing the searchlight of criticism to bear on the action or inaction of the executive government and its subordinates. A minister has to be constantly asking himself, not merely whether his proceedings and the proceedings of those for whom he is responsible are legally or technically defensible, but what kind of answer he can give if questioned about them in the House, and how that answer will be received."<sup>1</sup>

Although a means of calling ministers to account, questions do not, of themselves, involve a debate or a vote. Whether answered satisfactorily or not, they do not immediately endanger the tenure of the ministry—except in one contingency. If a member, seeking fuller information or bent upon testing the government's strength, moves "to adjourn for the purpose of discussing a definite matter of urgent importance," and if as many as 40 members support the motion, a debate takes place, nominally on the motion to adjourn, but really on the subject involved in the question and answer. The government opposes the motion, and if defeated must resign, or at least the minister directly affected must do so. This procedure, although furnishing a means by which any specific act or omission of the government can be made the basis of a vote of censure, is not often brought into play; and while bearing a certain resemblance to the French device of interpellation—which, indeed, was derived from it—it lends itself in no such fashion to the swift upsetting of ministries, often on mere pretext.<sup>2</sup>

<sup>1</sup> C. Ilbert, *Parliament*, 113-114. Cf. R. W. McCulloch, "Question Time in the British House of Commons," *Amer. Polit. Sci. Rev.*, Dec., 1933.

<sup>2</sup> See pp. 564-566 below.



2 Motions  
and votes of  
censure

Whether or not arising in connection with questions directed to ministers, motions of censure or motions expressing general want of confidence may put the cabinet on the defensive and lead either to its resignation or to a dissolution. Motions of censure are usually aimed at an individual minister, specifying particular acts or policies for which he is to be made to answer. They may be offered by any member (in practice, almost invariably, of course, an opposition member) who can gain the floor for the purpose, and they may lead not only to embarrassing debates but to hostile votes. However, under the rules, there are only seventeen days in an entire session—all in the earlier part—on which any kind of private motion may be made; the time allowed for considering such motions is so limited that only a small proportion ever reach a vote; and many of those offered have objects entirely foreign to criticism of the government. There are ways by which, at the worst, the Treasury Bench can usually stave off a vote on a motion likely to prove disastrous; and even in the event of a vote, such a motion, as the statistics of the matter plainly show, is very unlikely to prevail. The criticism of individual members, directed at some particular act (often of secondary importance), has very much less effect than in France. The theory, and to a large extent the practice, of the English system is, rather, that the ministers shall stand or fall upon their general policy, upon their whole record, or if upon a particular matter, at all events only upon one of first-rate importance. They are, however, subject to challenge upon general policy; and this brings us to the second of the methods referred to, *i.e.*, a vote of want of confidence in the government, moved by the leader of the opposition and directed, not at any specific act, but at the ministry's policy in general. This is, of course, an extreme procedure, but it is sometimes resorted to. Ordinarily the government will not dare attempt to prevent debate on such a motion; and defeat in the resulting division—which is squarely on the issue of turning out the ministry—must immediately be followed by resignation or a dissolution.

In such ways are the ministers, in their executive capacity, held to their presumed responsibility.<sup>1</sup> It does not follow, how-

<sup>1</sup> It should, perhaps, be added that executive acts and policies may be made the subject of inquiry or investigation by special committees, and that the reports of such committees may become the means of putting the government on the defensive

ever, that the House of Commons participates in, or indeed to any great extent interferes with, the ministers' administrative work. Not only does that body refrain from trying itself to perform administrative tasks, but it as a rule undertakes to regulate them, as performed by others, on only the most broad and general lines. Its business is to furnish the inquiry and criticism that will keep the ministers and their subordinates up to the mark—not to issue orders in advance as to what such officials shall do, but to survey the things they have already done and hold them to account therefor. It accordingly does not attempt to say how the departments shall be organized, how large their staffs shall be, what the civil servants shall be paid, or how reports shall be prepared. It does not expect any appointments of officials, high or low, to come before it for confirmation.<sup>1</sup> It indeed keeps hands off the executive and administrative machinery in a fashion quite unknown to the American Congress, which, notwithstanding our supposed deference to separation of powers, insists on reaching over into the executive and administrative spheres and regulating even the matter of salaries down to the last detail. The growing volume of business in the House of Commons makes it impossible for that body to scrutinize the work of the government even as closely as was formerly done, which of course means just so much more freedom of action in the great offices in Whitehall. Scarcely a ministry in fifty years has been turned out of office by a hostile Parliament because of its administrative acts; and the chances of such a thing happening have of late been steadily diminishing.

Parliament's actual rôle in relation to administration

From the developments described flow consequences both desirable and otherwise. The first that strikes the eye is a highly integrated and absolutely continuous leadership in legislation, contrasting sharply with the divided, shifting, and precarious leadership found most of the time in the American Congress. For every session there is a program, not only of financial, but of all other legislation—a program prepared by the cabinet, introduced and managed by cabinet members, and so and even of forcing it from office. Such investigations are, however, not frequent, and they do not often have disastrous effects.

Some consequences of the cabinet's dominant position:

<sup>1</sup> It will be recalled that Parliament left the merit system in the civil service to be built up almost exclusively by means of orders in council, and that the system rests mainly on that basis today.

1. Leadership and unity in legislation

favored by the rules of procedure that it cannot be shunted off the main line or seriously impeded by rival legislative proposals from non-ministerial sources. In the United States, no member of the executive branch can introduce a bill, or support one from the floor of either house; and while there is often an "administration program" of legislation, it does not presume to cover all of the subjects likely to come up, it is put on the congressional calendars only in piecemeal fashion as senators or representatives can be found to sponsor different parts of it, and there is no such likelihood that it will prevail as in the case of a government program introduced at Westminster. Administration bills at Washington rarely hang together as parts of an integrated legislative program,<sup>1</sup> and it is significant that even major statutes usually bear, not titles indicating the subject-matter with which they deal, as do British measures emanating from the government, but only the names of the chairmen of committees which have decided upon, formulated, and introduced the bills, quite independently, and often without the approval, or even the full knowledge, of the White House or the departments.<sup>2</sup> There are those who believe that the centralization and unification of legislative leadership have been carried too far in the British system—that cabinet government has overreached itself in this regard and become sheer cabinet dictatorship.<sup>3</sup> In so far as concentration of initiative and unity of plan are useful, however, the British system certainly leaves nothing to be desired.

2. Stability of ministries

Another consequence of what has happened is greater stability for the ministry than prevails in most countries having cabinet governments. Political, *i.e.*, party, homogeneity is, of course, one reason why cabinets, on the average, last considerably longer at Whitehall than in Paris or Berlin. But another reason lies in the power which the cabinet possesses to turn upon a rebellious parliament, procure its dissolution, and subject its

<sup>1</sup> There are, of course, exceptions. Notable examples are afforded by the Wilson administration's program in 1913 and that of the Roosevelt administration in 1933.

<sup>2</sup> For example, the Sherman Act, the Adamson Act, the Volstead Act, etc., as contrasted with such British titles as Municipal Corporations Consolidation Act, Government of Ireland Act, Representation of the People (Equal Franchise) Act. On the tortuous experience of the American Congress in seeking the unified leadership which our form of government commonly discourages the executive from supplying, see F. A. Ogg and P. O. Ray, *Introduction to American Government* (4th ed.), Chap. xxi.

<sup>3</sup> R. Muir, *How Britain Is Governed*, 87-91.

members to the trouble and expense of recapturing their seats, if they can, at a general election. Even if a defeated cabinet merely resigns, the ruling party goes out of power. But if it chooses to precipitate a dissolution, it brings upon everybody the costs and hazards of an electoral campaign. Faced with these cold facts, a government majority can usually be depended upon to see that the ministers get what they ask, whether or not there is any genuine enthusiasm for their proposals. Armed with paramount rights of initiative, supported by procedural rules drawn in their favor, and holding the power of life and death over Parliament itself, the cabinet indicates what is to be done; and Parliament, on its part,—at all events, the House of Commons (which chiefly counts in such a matter)—dreading the consequences of refusal, complies. Well might a Frenchman, observing ministries in his own land toppling and rebuilding every few months, envy the stability of Whitehall! On the other hand, contemplating the admitted decline of free parliamentary life on the Thames-side, he might also feel that stability can be bought at too great a price.

For, quite apart from the abstract question of whether it is a healthy state of things for any group of 20 men (or fewer) to possess such power in a representative government as that now wielded by the British cabinet, there are other aspects of the situation that arouse misgivings. One of them is the fact that the cabinet has arrogated to itself far more work than it can do well—"colossal responsibilities which it cannot meet." Cabinet ministers are commonly diligent and reasonably capable. But their days are only 24 hours long, and their energies not inexhaustible. Immersed in problems and tasks of the moment, they too often find it difficult or impossible to undertake larger services which the cabinet alone is fitted to perform, especially in the direction of coördinating the work of the departments and in that of large-scale and long-time planning. Overworked though it is, however, and obliged to neglect many things that ought to be done, every cabinet, irrespective of party, clings jealously to the multifold prerogatives that have descended to it, and indeed reaches out for more.

As the cabinet has waxed, Parliament has waned. Everybody agrees that there has been not only a decline of parliamentary oratory but also a falling off of interest on the part of members

3. Overload-  
ing of the  
cabinet

4. Eclipse of  
the "back-  
bencher"

in the proceedings of the two houses. In the House of Commons, where the change is most marked and also most significant, many factors—among them, the use of closure—have borne some share. But a main cause is the growing sense of the futility of debate on measures the form and fate of which have already been largely determined before the House so much as saw them. Occupants of the Front Treasury Bench will, of course, explain and defend their bills. Occupants of the Front Opposition Bench will, from force of habit, if not from hope of rallying opposition strength and tripping up the government, criticize and denounce. But for the “back-bencher” (and that means the great bulk of members, government and opposition alike) there is not much opportunity, either to influence decisions or to win prestige. He may, of course, gain a fleeting prominence at question time; he may propose amendments to government bills when in committee stage; he may introduce bills of his own on any except financial subjects; he may get the eye of the speaker and have some part in debate. But so far as any independent bills of his own are concerned, he may be pretty sure that unless they deal with unimportant, or at any rate non-controversial, matters they will never be advanced beyond second reading;<sup>1</sup> and as for debate, he may usually as well recognize before he starts that no argument that he can make will have any effect on the outcome, although, of course, if it shows ability it may serve to bring him to the notice of the powers that be and thereby improve his outlook for a career. It does not matter much whether he is a government or an opposition member. The former is no more consulted than the latter on measures which ministers propose to introduce. “He sees them only when they come from the printers; and then he knows that, whether he likes them or not, he will be expected to support them by his vote in the lobbies.”<sup>2</sup>

Students of legislation are aware that in all parliamentary bodies there are some members who lead and others who follow. Hardly anywhere else, however, do the bulk of members

<sup>1</sup> On an average, about 85 per cent of the government bills introduced in a session become law, but only 10 or 12 per cent of private members' bills.

<sup>2</sup> S. Low, *Governance of England*, 79. It must be borne in mind, of course, that a member's activity and usefulness are not measured solely by his participation in debates and divisions. There is, for example, his work on committees (both on public and on private bills), on investigating commissions, etc.

so largely forego liberty of action as in the British House of Commons. There is considerably more chance for the private member to get important bills acted upon, to help turn the tide in debate, and to vote independently, in the French Chamber of Deputies and most other Continental legislatures; and the position of the ordinary congressman in the American House of Representatives is decidedly freer. The latter may not only introduce, but secure action on, bills of any character whatsoever, even including money bills; he can take nearly as much, and conceivably quite as effective, part in debate as anybody else; he can, and frequently does, oppose measures sponsored by the leaders of his party, including the president; he may even vote against such measures with impunity, at all events if—as is true of a large proportion of bills—they have not been made the subject of caucus action. Party lines are so much less adhered to at Washington than at Westminster that, as compared with the British back-bencher, the “gentleman from New York,” or “from Texas,” is a free agent indeed. How largely this contrast arises from the dominating position of the cabinet in the one case and the infrequency of any comparable executive leadership and command in the other must have become sufficiently apparent to require no comment.<sup>1</sup>

As the great bulwark of popular self-government, Parliament has traditionally stood high in the esteem of the nation. We have already noted, however, that of late—meaning in the last 20 or 30 years—it has suffered a decline in repute, and is today the object of much criticism and solicitude. Some of those who find fault with it are Communists or other radicals who consider all political methods futile and would like to see parliamentary machinery dispensed with completely. Others do not go so far as this, but nevertheless feel that parliaments (the British included) as constituted today are bankrupt and will have to be totally reconstructed and reoriented before they will function acceptably. Antiparliamentarism, in one form or another, has become a weighty factor in Continental politics, even in countries that have not succumbed to dictatorship; and it is to be reckoned with in Britain as well. Still other critics consider

Current dissatisfaction with Parliament

<sup>1</sup> The changing relations of Parliament (especially the House of Commons) and the cabinet are discussed pointedly in R. Muir, *How Britain Is Governed*, Chap. iii. Cf. A. L. Lowell, *op. cit.*, I, Chaps. xvii–xviii; S. Low, *Governance of England*, Chap. v.

that Parliament as we have known it is by no means played out, but is merely the victim of circumstances that have come about naturally, perhaps inevitably, and that to a considerable extent can be overcome or alleviated. They see, with Lord Bryce, many causes that have been tending to reduce the prestige and authority of legislative bodies,<sup>1</sup> but believe, as he also did, that, with suitable readjustments and reforms, such bodies will remain effective instrumentalities of popular government. In particular, they deplore the decline of the House of Commons as a deliberative assembly because of the overcrowding of its calendars, the tendency to further concentration of power in a cabinet already too autocratic and too preoccupied with routine to be able to discharge its larger functions acceptably, the inadequate check-up on the administrative activities of the government when the estimates are being considered, the delays and uncertainties encountered in bringing about legislation on matters of grave public import, the extinction of the private member except as an automatic voter. They are more or less appreciative of the fact that the power of the cabinet, like that formerly enjoyed by the American speaker, has developed out of the necessity of giving direction and leadership to the spontaneous and often misdirected energy of the House; and they are fully aware that the complexities of modern life render it necessary for law-making to be increasingly the business of experts. They believe, however, that ways can be found of restoring the deliberative character of the House and redressing the balance between House and cabinet on something like the traditional lines; and to this end most of their practical proposals are directed.

Some fundamental difficulties

Disregarding the opinions of the very small number of Englishmen who would do away with political machinery and methods altogether,<sup>2</sup> current criticisms aimed in the direction of Westminster boil down substantially to two: (1) Parliament has too much to do, and (2) even if this were not the case, it is not the most suitable agency to perform some of the tasks that are now

<sup>1</sup> *Modern Democracies*, II, Chap. lviii, on "The Decline of Legislatures."

<sup>2</sup> "Communism has so far never risen higher than the return of one solitary member to the House of Commons, and Fascism has made its appearance only in a succession of movements more suggestive of *opéra bouffe* than of serious counter-revolutionary activity." G. D. H. and M. Cole, *The Intelligent Man's Review of Europe Today* (London, 1933), 403.

entrusted to it. Upon the fact of overloading there is no difference of opinion. The records of any average session bear impressive testimony. Especially significant are the hurried consideration given most measures, the failure of numerous important government proposals so much as to get upon the calendar, the repeated instances in which parliamentary and royal commissions carry on extensive investigations and submit painstaking reports, only to see their work become useless as a basis of legislation because of the inability of Parliament to get round to the subject until after the data have become obsolete. A thing that is often overlooked is that the parliament that sits at Westminster is, in truth, a dozen or more parliaments rolled into one. It is called upon to make laws, control finance, scrutinize administration, and enforce executive responsibility, not only for England alone, but also for England and Wales, for Northern Ireland, for Scotland, for Great Britain, for the United Kingdom, for India, for the crown colonies (singly and collectively), for mandates and protectorates—even, to some extent, for the Empire at large; being, in these several capacities, “responsible, directly or indirectly, for the peace, order, and good government of a quarter of the population of the earth.” Small wonder that, in these days of rapidly expanding governmental regulation, the burden has become intolerable! Small wonder that the men at Westminster cannot perform all of the multifarious functions thrown upon them without neglecting some, overrating others, and often losing sight of the problem as a whole!

Such remedies as have thus far been applied have aimed principally at expediting the handling of business, once it is before the House. One of them is the use of committees—especially the newer standing committees—as described in an earlier chapter. Another is the introduction of the various forms of closure. A third is the progressive modification of the rules, beginning as far back as 1811, so as to give precedence to government bills, together with the shortening of the time for considering the estimates of expenditure to 20 days. A fourth is the growing practice of delegating to the king-in-council, to executive departments, and even to local authorities, power to issue orders and make rules filling out and applying legislation which Parliament has enacted only in skeleton or outline form. All this, however, has left the problem largely unsolved. Busi-

Remedies,  
actual and  
proposed



ness in hand is somewhat expedited, but the amount that still presses for attention seems, in these days of ever-expanding governmental regulation, more formidable than before. Not only is it appalling in quantity, but to an increasing degree it calls for a specialization of knowledge and a technical skill which no legislature made up on the lines of an ordinary national parliament can be expected to possess.

#### Devolution

In the face of this situation, Englishmen have in later years turned somewhat hopefully to a variety of proposals which may be grouped under the general term "devolution." The central idea is that a good deal of work for which Parliament is now responsible should be "devolved" upon, *i.e.*, turned over to, other bodies or authorities which could in many cases perform it better, while that left at Westminster would also be performed more deliberately and effectively than now. In other words, congestion at Westminster should be relieved, not only by devices promoting quicker decisions in the House of Commons, but by a division of labor calculated to prevent certain business from going to that body at all. There has, of course, been plenty of "devolution" already; the delegation of legislative power to executive and administrative authorities is a familiar species of it. Devolution on a grander scale than heretofore has, however, been urged; and the present discussion may appropriately close with some mention of the principal plans proposed.

#### Two possible bases or principles:

If work now falling to Parliament were to be reassigned, the principle followed might obviously be either geographical or functional. That is to say, specified, but more or less miscellaneous, powers might be transferred to substitute bodies set up in and restricted to designated sections of the country; or control over a single subject or integrated branch of public affairs might be relinquished to one or more bodies operating throughout the land as a whole. In the degree to which the one plan or the other was adopted, the result would be territorial devolution or functional devolution.<sup>1</sup>

#### 1. Functional

Both schemes have ardent advocates. In general, the functional plan is favored by the more radical political elements, the territorial by the more conservative; although plenty of people

<sup>1</sup> The distinction is fundamental, but of course not absolute. Devolution according to areas would necessarily involve devolution also by subjects.

are still disinclined to see either proceeded with to any great extent. The functional principle could, of course, be applied in connection with many different fields of governmental control, e.g., education and public health, for each of which might conceivably be set up a separate national body charged with either conditional or absolute legislative power. As a matter of fact, however, the idea is urged mainly in relation to what may broadly be termed industrial matters. Thus a large portion of the Labor party follows Lord Passfield (Sidney Webb) and Beatrice Webb in their proposal to draw a line between political government and industrial government, to set over against the political parliament and the present political executive a social parliament with separate executive organs, and thereby to accomplish the double purpose of achieving industrial (equally with political) democracy and relieving the present political parliament and cabinet of an appreciable share of the burden of work under which they stagger.<sup>1</sup>

There is a good deal to be said for the functional principle. 2. Territorial  
Many students of the subject feel, however, that the rescue of parliaments from their present congested condition must be by means of organs definitely subordinate to them, not through independent or quasi-independent authorities. Moreover, recent association of the functional idea with various forms of Continental radicalism, e.g., syndicalism and bolshevism, has cooled even such interest as the average Englishman's native conservatism had permitted him to develop. Certainly public feeling today is not, on the whole, favorable to the adoption of any definite functional plan. Territorial, or regional, devolution is, however, not only a much-discussed, but a highly practical, question. The essential idea in it is that the congestion of business from which both Parliament and cabinet suffer might be relieved, and legitimate aspirations to regional self-government at the same time satisfied, by dividing the kingdom into certain

<sup>1</sup> *A Constitution for the Socialist Commonwealth of Great Britain* (London, 1920). Pt. II, Chap. I. In "A Reform Bill for 1932," *Polit. Quar.*, Jan.-Mar., 1931. Mrs. Webb presents a plan under which a new national assembly (with its own national executive) would have functions extending considerably beyond "industrial" in the proper sense of the term. Various economic councils in Continental countries, and indeed in Britain itself, although not endowed with law-making powers, illustrate world-wide tendencies toward functional types of organization. See pp. 684-687 below.

great areas, each to be given a subordinate, yet reasonably powerful, parliament of its own, with suitable arrangements also for administration by regional authorities. Under such an arrangement, a great deal of the business that now clutters up the calendars at Westminster would pass over entirely to the regional assemblies; and although the latter would not be sovereign bodies in the same sense as the imperial parliament, most of their acts would not require even so much as review by that authority.

Natural areas  
for purposes  
of devolution

Adoption of the plan, furthermore, would not necessitate cutting the country into new and arbitrary divisions; for although it is occasionally suggested that the areas for the purpose should be formed by combining counties in more or less artificial groups, it is usually considered that both the natural and proper areas would be the great historic lands out of which the United Kingdom was fabricated, *i.e.*, England, Wales, Scotland, and Ireland. As things now stand, much legislation—estimated to consume, in the aggregate, a full quarter of Parliament's time—has to be enacted at Westminster for each of these regions separately. Let the bulk of this regional legislation, it is argued, be turned over to regional parliaments, so that the parliament at Westminster may be freer to give proper time and attention to the affairs of the realm in general, including those of England unless a subordinate parliament should be set up for that area also. The argument is strengthened not only by the circumstance that Scotland and Wales are actively agitating for parliaments of their own, but by the fact that Northern Ireland, under the Government of Ireland Act of 1920, has been given a separate legislature and therefore affords a true example of devolution already in operation—to say nothing of "free-state" Ireland with its full dominion status.<sup>1</sup>

Proposals of  
the speaker's  
conference

At the close of the World War, it was common opinion that Parliament had reached its lowest ebb, and it is not strange that at a juncture when constitutional readjustment was much in

<sup>1</sup> It is interesting to observe that the historic Irish home rule movement always looked to home rule not only for Ireland but for other parts of the United Kingdom, *i.e.*, "home rule all round," and that the Irish home rule bills of 1912 and 1919 were put forward by the respective cabinets as parts of a general program of regional devolution. In the end, the greater part of Ireland got much more than "home rule," becoming a fully self-governing dominion. But the northern counties are on a home rule basis, almost exactly of the sort that present advocates of territorial devolution have in mind. See pp. 410-416 below.

the public mind devolution should have become a leading subject of discussion—the more by reason of the fact that the Irish question was still awaiting settlement. The House of Commons itself took up the matter and, after lively debate, went on record, in 1919, by a decisive vote, in favor of “the creation of subordinate legislatures within the United Kingdom” and asked the government to appoint a parliamentary commission to prepare a plan. The result was a “speaker’s conference,” which in the spring of 1920 laid before Parliament, not a single plan—because complete agreement was found impossible except on the main question of whether devolution was desirable—but two alternative plans, one commonly referred to as the speaker’s plan, the other as the plan of Mr. Murray Macdonald, one of the minority members.<sup>1</sup> The government having introduced a new bill on Ireland while the commission was deliberating, it was decided to leave that part of the realm out of account. But there was unanimous agreement that subordinate legislatures should be created in England, Scotland, and Wales; and there were no wide differences of opinion upon the powers that might properly be transferred to them. In general, these powers embraced all regulation of trades and professions, police, public health, public charities, agriculture, law and minor judicial administration, education, ecclesiastical matters, housing, insurance, highways, and municipal government, together with control of a long list of sources of public revenue.

The main difference between the two schemes related to the composition and form of the proposed regional legislatures. Under the speaker’s plan, each area was to have a “grand council” consisting of (a) a council of commons, composed of all of the members of the national House of Commons sitting for constituencies within that area, and (b) a council of peers, consisting of members of the House of Lords designated by the committee of selection of that body, and half as numerous as the members of the lower house. All members of the divisional parliaments would, therefore, be members also of the general parliament; and the meetings of the former were to be held in the autumn of each year so as to avoid conflict with the sessions of the latter.<sup>2</sup>

<sup>1</sup> *Conference on Devolution: Letter to Mr. Speaker from the Prime Minister* (with appendices). Cmd. 692 (1920).

<sup>2</sup> This scheme might be viewed as, in essence, an extension of the existing com-

The Macdonald plan, on the other hand, provided for divisional parliaments whose members were to be specially elected to them, without relation to membership in the national parliament. This would enable them to sit when and as long as they pleased; and they were to be organized in one house or two as the government should later determine.<sup>1</sup>

Objections  
and obstacles

It was one thing to contemplate the beauties of devolution in the abstract, and quite another to take responsibility for the constitutional wrench that would be necessary to put it into effect. The commission's plans attracted much attention, both at Westminster and throughout the country. But the nation was not ready for the plunge, and to the present time nothing further has been done, beyond keeping up discussion of the general problem from all conceivable angles, and, perhaps one should add, carrying out in 1929 certain decentralizing changes in the relations of national and local authorities in line with the devolution principle. The proposal in general and the plans of 1920 in particular have been criticized on many grounds. It is objected that to proceed on any of the suggested lines would mean to turn back the pages of history—to loosen bonds of union which, as Mr. Balfour once reminded his countrymen, two hundred years of constitutional development have consistently aimed to strengthen. The Irish settlement has, of course, shattered some of those bonds irreparably; the less reason, it is argued, for deliberately relaxing those that remain. By the same token, devolution would obscure the unitary character of the government and impart a decided slant toward federalism; it might even end in outright federalism. But no centralized state (so it is argued) has ever regarded a more loosely knit system of sovereignty as an object of deliberate policy; constitutional readjustment has always been pointed in the opposite direction.<sup>2</sup> Furthermore, it is contended, devolution, if tried, would prove a disappointment. Certainly in the form proposed

mittee system, except that (1) the regional bodies would be *joint* committees, (2) they would sit elsewhere than at Westminster, and (3) they would have power not merely to discuss and report but also to act.

<sup>1</sup> The work of the conference and the schemes proposed are described at length in W. H. Chiao, *Devolution in Great Britain* (New York, 1926), Chap. vi.

<sup>2</sup> Federalism as a possible solution of Britain's problem is discussed unfavorably in A. V. Dicey, *Law of the Constitution* (8th ed.), Chap. iii. The relations between federalism and devolution are discussed in W. H. Chiao, *op. cit.*, 28-36.

in the majority scheme of 1920 it would not make life any easier for the men who should find themselves members of two parliaments instead of one. But in any case the effect would be to duplicate machinery, complicate tasks, and produce confusion and conflict of jurisdiction, to such extent that the wear and tear of present legislative life would be but slightly relieved, if at all. Particularly prolific of difficulties would be the bisection or trisection of services which by their nature need to be handled integrally, the inescapable but nearly impossible allocation of control over revenues, and the tendency to *ultra vires* legislation. In the homely English phrase, much of what was gained on the savings might easily be lost on the roundabouts.

Finally, it is pointed out that the time and effort of the House of Commons—possibly of the cabinet also—could be economized appreciably by changes less drastic than devolution, and entailing fewer disadvantages. One such would be the oft-discussed extension of the committee system in connection with handling the estimates. Another would be the transfer of all private bill legislation to an entirely distinct body, of a frankly judicial character, and able to sit locally when, as in large numbers of cases, there would be gain in doing so. In reality, this would itself, of course, be a species of devolution, on functional lines; and it may be added that the increasing use of provisional orders, while not relieving Parliament of the necessary formalities of confirmation, has already appreciably reduced the number of private bills coming before the body, and therefore the labor involved in handling them. Still another mode of relief would be the granting of wider powers to county, borough, and other local authorities—a policy which some capable students of the problem believe would of itself yield all the saving of Parliament's time that could possibly be realized from any scheme of devolution. Of such decentralization—on lines which in America would be termed “home rule”—there has already, of course, been a good deal. There will be more, in certain directions. If, however, we accept the common view that the trend of modern social and economic development is toward consolidation and integration, calling for more uniform and concentrated legislative control, the gains to be looked for from this source are problematical. Certainly in the United States the tendency is toward the increase of the functions and activities of the national govern-

Possible improvements without devolution

ment at the expense of the states;<sup>1</sup> and one is moved to wonder how far a nation with a highly unitary government such as the English can expect to go in the direction of federalism in an age in which another kindred nation endowed with a thoroughgoing federal system is finding that system increasingly inadequate for its purposes.

At all events, how to reconcile the legitimate demands of the cabinet with the equally legitimate rights of parliamentary minorities; how to find time within parliamentary hours for disposing of the growing mass of public business; in what measure, and by what means, Parliament can hope to recover its lost prestige—these and other questions (plenty of them) challenge the British statesman at every turn. Solutions will have to be found. When arrived at, however, they will probably be discovered to have taken the characteristic English form, not of wholesale change carried out according to a theory, but of slow and piecemeal readjustment.<sup>2</sup>

<sup>1</sup> F. A. Ogg and P. O. Ray, *op. cit.* (4th ed.), Chap. xxviii; W. Thompson, *Federal Centralization* (New York, 1923).

<sup>2</sup> The case for devolution is argued in J. A. M. Macdonald and Lord Charnwood, *The Federal Solution* (London, 1914); J. R. MacDonald, *Parliament and Revolution* (New York, 1920), Chap. viii; and W. H. Chiao, *Devolution in Great Britain* (New York, 1926), Chaps. ii–iii. Objections are voiced in H. J. Laski, *A Grammar of Politics*, 309–311, and H. Finer, *The Theory and Practice of Modern Government*, II, 878–887.

## CHAPTER XVI

### DEVELOPMENT OF THE PARTY SYSTEM

In every modern state, people are grouped in trade unions, employers' and professional organizations, churches, universities, and similar voluntary combinations having economic, educational, philanthropic, or other objectives. Cutting across these groups are combinations of voters who, holding the same general views on some, if not all, public questions, seek by concerted action to gain control of the government as a means of ensuring that the policies in which they are interested will be carried into effect. Associations of this nature are known as political parties. Parties have not been altogether lacking in countries having an autocratic form of government. There were parties of protest and reform in tsarist Russia. Soviet Russia, Fascist Italy, and "Nazi" Germany are in each case today under a dictatorship grounded upon a monopoly of power by an elaborately organized and rigorously disciplined party. Japan has a full-blown party system, even though her government can only by courtesy be called democratic. It is, nevertheless, where popular government prevails that parties find fullest and freest scope. There it falls to the people to decide upon public policies, or at all events to select from among themselves the persons to whom the making of such decisions shall be entrusted. This, however, they rarely or never can do without developing wide differences of opinion; and out of these differences political parties arise. Parties may be largely personal followings; they have notoriously been such in Italy, in Japan, and in Latin American countries. They may become barren of principles—bottles (to use a metaphor of Lord Bryce) bearing different labels, but empty. They may be sectional rather than national, evanescent rather than stable. Unless mere factions which do not really deserve the name of party, they, however, have, or have had, a creed and a program; they rally as many people to their standard as direct appeals and other means avail to attract; they have officers and treasuries, newspapers and printing presses, songs and slogans; they

The nature of  
political  
parties



construct platforms, nominate candidates, win seats in the legislature, and, in the degree to which they are successful, share in determining what the government shall be and do. "Party," asserts a well-known political scientist, has indeed "ceased to be the invisible government, and has become not only the visible, but the acknowledged, government in democracies."<sup>1</sup>

The uses of  
parties

It is common enough to hear political parties spoken of disparagingly. They exist, some one has cynically remarked, not because there are two sides to every question, but because there are two sides to every office—an outside and an inside. Party primaries and conventions, party caucuses, party bosses, party finances, party campaigns, the spirit of party—all come in for criticism; and rightly, considering how grievously the interests of good government sometimes suffer at the hands of party managers and workers. Nevertheless, to quote Lord Bryce again, "parties are inevitable. No free large country has been without them. No one has shown how representative government could be worked without them. They bring order out of the chaos of a multitude of voters. If parties cause some evils, they avert and mitigate others."<sup>2</sup> The fear of parties so frequently expressed in eighteenth-century England and in the early days of the American Republic has given way to acceptance of them as not only inevitable but necessary and desirable.

To be more specific, the uses of political parties in a popular government are at least five-fold. First, they enable men and women who think alike on public questions to unite in support of a common body of principles and policies and to work together to bring these principles and policies into actual operation. In the mass, and without organization, the people can formulate no principle, agree on no policy, carry through no project. Second, parties afford a convenient, and indeed indispensable, means by which men who have the same objects in view may agree in advance upon the candidates whom they will support for office, and recommend them to the electorate. Third, they educate and organize public opinion and stimulate public interest by keeping the people informed upon the issues of the day through the press, platform, radio, and other agencies. Fourth, they furnish a certain social and political cement by which the

<sup>1</sup> H. Finer, *Theory and Practice of Modern Government*, I, 620.

<sup>2</sup> *Modern Democracies*, I, 119.

more or less independent and scattered parts of a government (in so far, at all events, as they are in the hands of men belonging to the same party) are bound together in a coherent working mechanism. Fifth, the party system tends to ensure that the government at any given time will be subject to forceful, organized criticism—often enough, it is true, unintelligent and unfair, yet calculated, by and large, to keep the powers that be on their good behavior. All of these are important services, essential to well-ordered popular government.<sup>1</sup>

It was in England that parties, in the full modern sense of the term, first made their appearance; and aside from abnormal situations such as those in Italy, Russia, and Germany, in which a single party completely monopolizes political power, nowhere do parties today play a more important rôle. The cardinal feature of English government is, of course, the responsibility of ministers to the House of Commons, or, to put it more broadly, the cabinet system. Not only, however, did the party system arise contemporaneously with the cabinet, and in necessary connection with it, but parties are fairly to be considered a prerequisite to the very existence of the cabinet system. Without parties, there would be no dependable, organized forces in Parliament interested in keeping a given group of ministers in office; neither would there be forces, similarly coherent and organized, ready to drive them from power at the first sign of weakened support. There would be small point to the resignation of a ministry if no opposing party or party *bloc* stood ready to provide a ministry devoted to different policies, and to assume full power and responsibility. In the words of Ramsay Muir, "it is the leadership of a *party* that gives to the prime minister his enormous power; it is common membership of a *party* that gives unity of character and aims to a cabinet; it is the existence of an organized supporting party in the House of Commons that enables the cabinet

Party system  
and cabinet  
system in  
England

<sup>1</sup> Compare, however, the trenchant discussions in H. Belloc and G. Chesterton, *The Party System* (London, 1911), and R. Michels, *Les partis politiques; essai sur les tendances oligarchiques des démocraties* (Paris, 1914), trans. under the title *Political Parties; A Sociological Study of the Oligarchical Tendencies of Modern Democracy* (New York, 1915). On the nature and functions of parties, see also J. Bryce, *Modern Democracies*, I, Chap. xi; A. L. Lowell, *Public Opinion and Popular Government*, Chaps. v-viii; E. M. Sait, *American Parties and Elections* (New York, 1927), Chaps. vi-vii; and A. N. Holcombe *et al.*, "Parties, Political," in *Encyc. of the Soc. Sci.*, XI, 500 ff.; and on the outlook for parties in the United States and other countries, A. N. Holcombe, *The New Party Politics* (New York, 1933).

to carry on its work, and (when the party has a majority) endows it with a complete dictatorship over the whole range of government; and this dictatorship is only limited or qualified by the fear of those who wield it lest any grave blunder may weaken the *party* in the country, and bring downfall at the next election."<sup>1</sup>

To an appreciably greater extent than under the presidential system in the United States, parties in Great Britain function inside, rather than outside, the governmental system, in certain degree, indeed, the machinery of party and the machinery of government are, in personnel and even in function, one and the same thing. The ministers—at all events those who sit in the cabinet—are at the same time the working executive, the leaders in legislation, and the chiefs of the party in power. The majority in the House of Commons, which legislates, levies taxes, and appropriates money, which further holds the ministers accountable for the conduct of the executive departments, and by its support keeps them in power as long as it is able, is frankly known as the "parliamentary" party (Labor, Liberal, or Conservative, as the case may be); while over against the ministry and its parliamentary majority stands the "opposition," consisting of members who belong to a different party and whose leaders are prepared to take the helm whenever their rivals can no longer go on.

Bi-party vs.  
multi-party

Not only does a responsible ministry presume government by party; in order to work smoothly, such a ministerial system requires the existence of two great parties and no more—each, in the words of Bryce, "strong enough to restrain the violence of the other, yet one of them steadily preponderant in any given House of Commons."<sup>2</sup> Considerations of unity and responsibility demand that the party in power shall be strong enough to govern alone, or substantially so. Similarly, when it goes out of power, a party of something like equivalent strength ought to come in. Obviously, this must mean two great parties, substantially dividing the electorate between them. Any considerable splitting up of the people beyond this point is likely to result in the inability of any single party to command a working majority, with the result that ministries will have to be based on coalitions, and, lacking solidarity, will be liable to be toppled over by the first

<sup>1</sup> *How Britain Is Governed*, 116.

<sup>2</sup> *American Commonwealth* (3rd ed.), I, 287.

adverse wind that blows. This is precisely the situation in France and other Continental countries, which, having copied the outlines of the English cabinet system, are handicapped seriously in operating the scheme by the multiplicity of their parties and factional groups.<sup>1</sup> Despite the rise, fifty years ago, of the Irish Nationalists, and later of the Labor party, it was still true in Great Britain at the outbreak of the World War, as it had been since political parties first made their appearance there, that nearly the entire population gave its allegiance to one or the other of two parties only. The defeat of one meant victory for the other, and either alone was normally able to govern independently if elevated to office. The war brought about the formation of a series of coalition ministries, lasting, all told, from 1915 to 1922. At the end of that time, party government was resumed, with the Conservatives in power. In opposition, however, were now found, not one great party as in former times, but three separate parties—National Liberal, Independent Liberal, and Labor. And although the two branches of Liberalism were reunited in 1923, Labor had meanwhile attained such strength that even yet there were three major parties instead of two. As will be explained below, the country is still trying to find its way back to the historic bi-party system in which nearly all Englishmen firmly believe. A main reason why proportional representation, though having admitted values, is looked at askance is the presumed tendency of the device to “balkanize” the political structure by encouraging the multiplication of parties.<sup>2</sup>

The seventeenth-century origins of English parties, together with the relations of Whigs and Tories after the Revolution of 1688–89, have been indicated in an earlier chapter.<sup>3</sup> For a

An outline of party history:

<sup>1</sup> See pp. 504–505 below.

<sup>2</sup> W. J. Shepard, “The Psychology of the Bi-Party System,” *Social Forces*, June, 1926, is a lucid discussion of the bi-party principle. Cf. G. M. Trevelyan, *The Two-Party System in English Political History* (Oxford, 1926). For a fuller consideration of the relations of party and the cabinet system, see A. L. Lowell, *op. cit.*, I, Chap. xxiv. There is, curiously, no convenient general history of English parties, nor indeed any systematic and up-to-date treatise on the English party system. Chapters xxiv–xxxvii of Lowell's work treat the subject satisfactorily, except that they are out of date; and certain phases are covered exhaustively in M. Ostrogorski, *Democracy and the Organization of Political Parties*, trans. by F. Clarke (London, 1902), I.

<sup>3</sup> See pp. 205–209 above.

1. Before the  
World War

century and a half thereafter, the two great parties oscillated in control of the government, usually remaining in power for a considerable period at a stretch. The Whigs had the upper hand under the early Georges; the Tories, gaining power in 1783, dominated throughout the era of the American and French Revolutions, and indeed until the Duke of Wellington's cabinet was swept from office in 1830. Except for two or three brief intervals, the Whigs again ruled from that date until 1874. Having accepted the consequences of the seventeenth-century revolution, including the Hanoverian dynasty, the Tories no longer by 1830 differed from the Whigs in any very fundamental way. Only the upper classes as yet counted for much in politics, and accordingly the two parties were about equally aristocratic, with the great landowners found predominantly in the Tory camp. Reënforced and appreciably liberalized by the infusion of newly-enfranchised middle-class townspeople after 1832, the Whigs, however, were given somewhat of a bent toward democracy, and their first decade of power in the new era became a period of notable and long-awaited reform. It was at this time, too, that the possibly more significant party nomenclature of later days came into use: the name "Whig" gave way to "Liberal"; the term "Tory," although still often heard at the present time, yielded to the term "Conservative."

The question of tariff policy split both parties, although chiefly the Conservatives, at the middle of the century, and for a time party lines were shadowy. Under the leadership of Gladstone and Disraeli respectively, however, Liberal and Conservative morale was reëstablished after 1860-65, and throughout the remaining decades down to the World War the oscillation continued, with the Liberals in power chiefly in 1868-76, 1880-86, 1892-95, and 1905-15, and the Conservatives in 1874-80, 1886-92, and 1895-1905. The Liberals posed as the party of reform and progress, and many great achievements are to be set down to their credit. Though more inclined to keep things as they were at home and to stress foreign and imperial policy, the Conservatives nevertheless contributed a good deal to helping on such causes as suffrage extension and local government reform, and on most matters the parties differed rather in degree than in more fundamental ways. One subject, however, on which they were really far apart was Ireland. The "home rule" move-

ment, looking to a restoration of the Irish parliament taken away by the Act of Union of 1800, made trouble for both; indeed, a third party, the Irish Nationalists, controlling some 70 seats at Westminster, sometimes held the balance of power and made the carrying on of government difficult. In 1886, the third Gladstone ministry introduced a bill giving the Irish what they wanted, with reasonable safeguards. Failing of passage, even in the House of Commons, the measure prompted a secession of most of the elements of wealth and station from the Liberal party. Trying again in 1893, the Liberal leader had the satisfaction of seeing his plan adopted by the popular chamber, only to be frustrated in the end by a hostile House of Lords. After pursuing an independent course for some years, the dissenters of 1886, known as Liberal Unionists, gravitated into the ranks of the Conservative party.<sup>1</sup> On the other hand, the Irish Nationalists, recognizing that the success of their cause was bound up with the fortunes of the Liberal party, became in effect an affiliated group, even though they were not very amenable to discipline and sometimes failed their allies at critical moments.

At the turn of the century, the Conservatives were in the saddle and their rivals suffering from factional differences incident to the removal of Gladstone's strong hand from the helm. Still interested primarily in international and imperial matters, the governing party led the country into the war in South Africa, which, although successful, was not particularly glorious from the British point of view; and the high taxes entailed, together with sharp dissension in Conservative ranks precipitated by Joseph Chamberlain's proposal for a system of protective tariffs, gave the Liberals incentive to pull themselves together and enabled them, in 1905, to capture control of the government. In a general election held early in 1906, the rehabilitated party obtained the most impressive parliamentary majority known to the history of British parties down to that time. The next decade was a notable period of Liberal rule. The huge majority of 1906 melted away in 1910. Supported

<sup>1</sup> Joseph Chamberlain was but one of the many persons of prominence who travelled this road. Reënforced by the Liberal Unionist infusion, and holding resolutely to their original position on the Irish issue, the Conservatives—until the problem was removed from the arena of politics by establishment of the Irish Free State in 1922—were quite commonly known as "Unionists."

by the Irish Nationalists and by the rising Labor party, Liberal ascendancy continued, however, until 1915, when war-time conditions forced regular party government to give way for the time being to the principle of coalition. Few decades in modern English history have been more crowded with action or richer in legislation and constitutional change. Bent upon carrying out an ambitious program of economic, social, and political reform, the Campbell-Bannerman and Asquith governments found their main obstacle in the massive Conservative majority in the House of Lords; and the outstanding development of the period became the curbing of the powers of that body as accomplished in the memorable Parliament Act of 1911. The later years of the decade were marked by vigorous but inconclusive controversies over woman suffrage and other phases of electoral reform; and at the moment when the World War unexpectedly came on, the party faced the solemn probability that it would plunge all Ireland, perchance Britain as well, into civil war unless its resurrected home rule program, on which it had staked everything, was abandoned.<sup>1</sup>

2. Parties in  
war-time:

a. Truce and  
coalition

The moment war with Germany became a certainty, leaders of all parties and groups entered into a truce designed to shelve controversial matters, including the Irish question, and to stop partisan activities of every sort for as long as the conflict should last. With a party ministry in office, however, and with the war presently giving promise of being far more protracted than had been anticipated, dissatisfaction arose, and with it the idea that the government ought to be reconstructed so as to include, for the period of the emergency, the ablest representatives that could be brought together from all of the parties. The upshot was the adoption, in May, 1915, of a scheme of coalition, the Liberal prime minister, Asquith, remaining at the helm but

<sup>1</sup> In lieu of non-existent general party histories, mention may be made of H. Fyfe, *The British Liberal Party; An Historical Sketch* (London, 1928); M. H. Woods, *A History of the Tory Party in the Seventeenth and Eighteenth Centuries* (London, 1924), with a substantial chapter on the Conservative party in the nineteenth and twentieth centuries; H. Tracey (ed.), *The Book of the Labour Party* (London, 1925); F. H. O'Donnell, *History of the Irish Parliamentary Party*, 2 vols. (London, 1910). It goes without saying that a great deal of party history will be found in general historical works, such as those of W. E. H. Lecky and Spencer Walpole, and in biographies, autobiographies, and memoirs of men like the elder Pitt, Peel, Gladstone, Disraeli, Rosebery, Lord Salisbury, Joseph Chamberlain, Asquith, and Lloyd George.

distributing the ministerial posts in approximately equal numbers between Liberals and Conservatives, with also some representation for Labor. No one would have supposed that seven long years would pass before Britain should again have a ministry made up on the traditional party basis. Yet so it proved.

The novel arrangement did not always work smoothly. From time to time dissatisfied ministers threw up their positions and more than once the entire plan seemed to be going on the rocks. A general reorganization late in 1916 brought Mr. Lloyd George into the premiership, introduced the device of the war cabinet, and imparted fresh vigor to the prosecution of the contest overseas. But it left the friends of the deposed Asquith disaffected and marked the beginning of a rift in the Liberal ranks which, aggravated by the sharply differing backgrounds, temperaments, and techniques of the two leaders, eventuated in a complete split in the party and the emergence of the Asquith, or Independent, Liberals in the rôle of a small but troublesome parliamentary opposition. Furthermore, in the early summer of 1918 the Labor party, organized afresh on broader lines and growing rapidly in numbers, decided, over the protest of certain of its representatives in the ministry, to repudiate its agreement of four years previously and to begin working independently toward the goal of a Labor government. Months, therefore, before military victory was assured, the truce of 1914 broke down; and by the date of the armistice (November 11, 1918) the country was again witnessing party strife almost as heated as before the war, even though the lines were drawn differently and the issues considerably less clear.

b. The truce  
breaks down

Three days after hostilities were suspended on the Western front, a parliamentary dissolution was announced; and in December the people went to the polls at the first general election that the country had known since 1910. War-time conditions joined with the recently enacted electoral law to give the contest many novel features. The electorate, including some 8,500,000 women, was twice as numerous as ever before; balloting, except by soldiers and other absentees, was for the first time confined to a single day; votes were allowed to be sent in by post, and even to be cast by proxy; the usual party contest was replaced by a trial of strength between a coalition government seeking a fresh lease of life (including a mandate to speak for the nation

c. The gen-  
eral election  
of 1918



in the coming peace negotiations) and two opposition parties whose physiognomy would hardly have been recognized by one acquainted only with pre-war politics—the Independent Liberals, bent on resuscitating the historic Liberal party, and Labor, now grown to the stature of a major party and prepared to wage the most vigorous campaign of all. In the Catholic portions of Ireland, the issue lay between the fast declining Nationalists and a wholly new party—Sinn Féin (“Ourselves Alone”) which had sprung up during the war. The former wanted home rule made effective under a statute rushed through Parliament as the war was starting, but never as yet put into operation; the latter would have nothing less than full and immediate independence.

There was little room for doubt that the Coalition would win, but its margin of victory—478 seats in a new total of 707—exceeded all expectations. The Independent Liberals captured but 28 seats, and not only their leader, Asquith, but others among their more prominent men, went down to defeat. Labor increased its representation by winning 63 seats. This, however, was far less than had been hoped for, and the casualties included Ramsay MacDonald and most of the other outstanding party figures. Southern and central Ireland were swept by the Sinn Féiners, who obtained 73 seats, leaving their Nationalist rivals with but seven.

3. Party developments after 1918:

a. The end of coalition

Englishmen did not relish coalition government, but as matters stood at the existing juncture there was no alternative to going on with it. To be sure, the country had so far “gone Unionist” in the election that the party nominally headed by Bonar Law found itself with 53 more adherents in the new House of Commons than all other parties combined. Every one of these members, however, had been elected as supporters of the Coalition; and although Conservatives thenceforth preponderated heavily not only at Westminster but at Whitehall, the combination government, with a Liberal in first place, set out in the closing days of 1918 to extricate the country from war and solve the almost equally difficult problems of a restored peace. No one who lived through the period will need to be told that Mr. Lloyd George and his associates found the going difficult. From brief post-war prosperity, the nation was plunged into social and economic distress. Trade languished; unemployment

mounted; grudging deviation (under a Safeguarding of Industries Act) from the traditional free trade policy failed to yield important results. A government which opposition forces from the outside could not seriously menace gradually weakened under internal differences, and in October, 1922, with Parliament dissolved and a general election at hand, the Conservatives—conscious of their superior strength, and weary of domination by a prime minister who after all was not one of themselves, decided to go into the campaign as an independent party. Left high and dry, the Lloyd George cabinet resigned; the Conservative leader, Bonar Law, formed a ministry, and for the first time since 1915 the country found itself with a government organized on the traditional party lines. The election that followed yielded the Conservatives, on a platform of “tranquillity and stability,” 344 seats, or an absolute majority of 36.<sup>1</sup> In May, 1923, Mr. Law gave way, because of ill health, to a new Conservative leader, Stanley Baldwin.

Meanwhile, efforts were being made to bring together the warring segments of the Liberal party with a view to recovering something of the front-rank position enjoyed in pre-war days. There were plenty of obstacles. An earlier proposal, in which Mr. Lloyd George himself was interested, to build the Coalition into a permanent “center” party had failed. But between the two wings of Liberalism—now functioning as two entirely independent parties—and especially between their leaders, Asquith and Lloyd George, there was deep disagreement; in addition, moderate Liberals were gravitating into the Conservative ranks and more radical ones into the fold of Labor. People were saying that the historic Liberal party had had its day, that its work was done; and not a few Liberals, or ex-Liberals, were themselves of this opinion. Nevertheless, the Coalition once broken up and the Lloyd George following left without anchorage, the chances for a reunion of the party were considerably improved. The election of 1922 failed to bring it about; but when, in the following year, the newly installed Conservative prime minister, Mr. Baldwin, unexpectedly precipitated a general election on the issue of protective tariffs,

b. Efforts to  
rehabilitate  
the Liberal  
party

<sup>1</sup> This was the first general parliamentary election in which the portions of Ireland included in the Free State did not participate. The House of Commons had now been reduced to a membership of 615.

the opportunity to rally to the defense of the historic Liberal principle of free trade turned the trick, and seven dreary years of schism were brought—at all events outwardly—to an end. Asquith and Lloyd George became reconciled; the two parties merged into one. Against great odds—internal dissension which sometimes amounted to renewed schism, the powerful pull of Labor, and an electoral system which undoubtedly works to the Liberals' disadvantage—able and ambitious younger Liberals have labored for a decade to bring back the party to its old position, with considerable success so far as popular support goes, but with little or none when measured in terms of parliamentary representation.

c. Labor's  
rise to power

A third important development of the period—easily the most revolutionary of all—was the steady advance of the re-organized and broadened Labor party, culminating in 1924 in the formation of the first Labor ministry. Emerging from the election of 1918 with more seats in the House of Commons than any other non-Coalition party, Labor in 1922 polled within a million and a quarter of as many popular votes as the victorious Conservatives, raised its quota of seats from 76 to 142, and took undisputed possession of the Front Opposition Bench in the House of Commons.<sup>1</sup> In 1923, the Conservatives polled more popular votes than the year before, and the united Liberals more than the two Liberal parties on the previous occasion. Labor did quite as well. But the votes were so differently distributed in the constituencies that while the Liberals came off with 45 more seats and Labor with 49 more, the Conservatives suffered a loss of 86. No party had a majority. The Conservatives had a decided plurality. But they had gone to the country with a program on which they had been beaten, and if party government meant anything at all, they were due to surrender the reins. There was talk of an attempt at Conservative government by minority; also of a revival of coalition. But neither proposal struck fire, and to the consternation of many shuddering Englishmen, the Laborites—having 32 more seats than the Liberals—were invited to take the helm.

Neither of the older parties really coveted the thankless task of handling the country's affairs as they then stood, and after

<sup>1</sup> Between 1918 and 1922, the party had been obliged to share the Bench with the Independent Liberals.

recovering from its initial nervousness the nation showed itself willing to give the new government a fair chance. In addition to domestic and international difficulties which had baffled preceding ministries, there were plenty of additional handicaps to be overcome. The people were bound to expect, if not the millennium, at all events far more than could possibly be achieved; the party was quite without experience in the business of actual government, and was not sufficiently united and disciplined to be secure against internal friction; above all, the ministry commanded no majority in the House of Commons and could remain in office only so long as a goodly number of Liberals—bound by no formal alliance, but only by a general understanding—should prove willing to lend the aid of their votes.<sup>1</sup> Prime Minister MacDonald was, however, a leader of indefatigable industry and of more than ordinary ability; his ministry, if inexperienced, contained a good deal of talent; and a fair record was achieved, particularly in the domain of foreign relations. Recognizing that, as situated, it could do little toward effectuating the party slogan of “socialism in our time,”<sup>2</sup> and motivated by the new sense of responsibility that inevitably goes with holding office, the government quietly discarded radical ideas such as the oft-proposed capital levy and devoted itself to policies which, in the main, might, under similar conditions, have been pursued by either of the other parties. At one main point, however, it incurred suspicion, namely, in respect to tolerance of communism. By both a general and a commercial treaty, it had recognized the Soviet Union; and when, after some nine months in office, it saw fit to drop a case against an acting editor of the *Communist Workers' Weekly*, a storm of criticism broke over its head. On a motion in the House of Commons to appoint a committee of inquiry, the government—left in the lurch by the Liberals—was defeated; and for the third time in two years Parliament was dissolved and the voters called to the polls. Injured during the campaign by the publication of the “Zinoviev letter” (a missive subsequently proved a

d. The first  
Labor gov-  
ernment

<sup>1</sup> The situation was now the reverse of that existing before the war when Mr. Asquith's Liberal government was dependent on the support of Labor.

<sup>2</sup> Though from the first drawing its strength to a considerable extent from socialist sources, the party never made formal declaration of socialist faith until 1918. Even after that, its socialism was of the evolutionary variety, influenced far more by Fabian than by Marxian ideas.

forgery) in which a Bolshevik leader was supposed to have urged British Communists to make ready for a revolution, Labor, while increasing its popular vote by a million, suffered a net loss of 42 seats. The Liberal popular vote was cut almost in half; and the Conservatives, with not far short of a majority of the popular vote, and with a parliamentary majority of 104, returned to power. Labor's set-back was not considered fatal, but on all sides the Liberal *débacle* was interpreted as portending the early disappearance of the party.

e. Five years  
of Conserva-  
tive rule,  
1924-29

Upwards of five years now passed without another general election. During the whole of the period, Mr. Baldwin's Conservative government, backed by all of the votes that it needed in both houses at Westminster, was in a position to pursue its policies with as free a hand as the distracting economic situation permitted. The times were indeed difficult, and the record achieved—much too lengthy to be reviewed here—was uneven. The most sensational event was an attempted general strike of union labor in 1926, and the outstanding piece of legislation was the Trade Disputes and Trade Unions Act of 1927, which, as pointed out elsewhere,<sup>1</sup> dealt organized labor, and in particular the Labor party, a body blow. Inability to cope with the economic situation gradually wore down the government's prestige. Foreign policies, too, were not notably successful. Capitalizing the cabinet's protectionist leanings, revitalized by Lloyd George's resumption of active leadership and by his decision to turn large funds under his control into the party treasury, and enriched in ideas and policies by the studies of a number of able investigating committees,<sup>2</sup> the Liberals not only refused to concede that they were dead, but displayed unexpected powers of recuperation. Labor, too—although suffering (as a result partly of the general industrial situation and partly of the legislation of 1927) from a heavy slump in trade unionism, and in a bad way financially, was winning victories in parliamentary by-elections and in municipal contests which betokened a rising tide of discontent with a government that much of the time gave the impression of merely beating the air or of sheer inertia. Years, however, passed; and only when the constitu-

<sup>1</sup> See p. 159 above.

<sup>2</sup> Reported chiefly in *The Land and the Nation* (1925), *Towns and the Land* (1925), and *Britain's Industrial Future* (1928).

tional mandate of Parliament was drawing to a close did the cabinet fix May 30, 1929, as the date of another general election.

In a contest in which three-cornered fights were the rule rather than the exception and only seven seats went uncontested, the Conservative hold was broken no less completely than unexpectedly. From 400, the party's quota of seats fell to 269; as a campaign slogan, "safety first" manifestly failed. The Liberals came back with a popular vote more than double that of 1924, although with a net gain of only 12 seats. Labor rose from the depths to achieve the greatest triumph in its history. Pulling its popular vote up to within a quarter of a million of the still huge Conservative total (8,658,918), it garnered 289 seats—not a majority, to be sure, but only 19 short of it.<sup>1</sup> Clearly repudiated by the electorate, two-thirds of which had voted against it, the Baldwin government forthwith resigned, and a second Labor ministry, with MacDonald once more as premier, took the reins. Lacking a parliamentary majority (even though by but a slender margin), the new government's position was, as in 1924, precarious. This time, however, the party leaders had the benefit of actual experience in office; the nation had been pretty well convinced of the essential moderateness of the party's program;<sup>2</sup> the people did not want another election soon; and although, as before, the Liberals held the balance of power, enough of them seemed likely to prove dependable to enable the ministry to survive for at least the two-year period which MacDonald at the outset predicted for it. On many major matters—relieving unemployment, preserving free trade, limiting armaments—Liberals and Laborites were quite agreed.

<sup>1</sup> The growth of the Labor party in numbers and power may appropriately be reviewed at this point:

YEAR OF GENERAL ELECTION	SEATS CONTESTED BY LABOR CANDIDATES	POPULAR VOTE POLLED	SEATS WON
1906	50	323,195	29
1910 (Jan.)	78	505,690	40
1910 (Dec.)	56	370,802	42
1918	361	2,224,945	57
1922	414	4,236,733	142
1923	427	4,348,379	191
1924	514	5,487,620	151
1929	590	8,292,000	289

<sup>2</sup> An important party publication of 1928, *Labour and the Nation*, had contributed much to this new feeling of assurance.

Only in case the government sought to "bring Socialist doctrines into practice," said Lloyd George, would there "be trouble."<sup>1</sup>

f. The second Labor government

Once again, a Labor government won its principal successes in the domain of foreign and imperial affairs—mainly because, difficult as were the nation's problems in those fields, they were, after all, not quite so insuperable as those of a domestic character. Diplomatic relations with the Soviet Union, broken off during the Baldwin régime, were resumed; the Young Plan relating to reparations was accepted, with strong popular approval of Chancellor of the Exchequer Snowden's vigorous defense of the financial interests of his country; an Imperial Conference of 1930, followed by a conference on India, made progress toward constitutional reorganization of the Empire; Prime Minister MacDonald, visiting President Hoover for purposes of discussion and planning, led in preparing for the London Naval Conference of 1930, and, with the assistance of the Foreign Secretary, Arthur Henderson, for the Disarmament Conference of 1932. On the domestic side, much had been promised during the campaign, but comparatively little could be performed. Hardly was the ministry in office before it found itself harassed by major labor disorders; and though it contributed a good deal to the settlement of various strikes, by means of arbitration, its principal electoral pledge—to relieve unemployment—went almost entirely unfulfilled. Even the solemnly promised revision of the Trade Disputes and Trade Unions Act of 1927 proved impossible. Something was done for the coal industry by a Coal Mines Act of 1930; an unemployment insurance measure was passed; a national Economic Advisory Council (which, however, proved of no great importance) was established;<sup>2</sup> and two successive annual budgets, while stirring opposition in some quarters by proposals for higher income taxes and for the heavier taxation of land, proved reasonably satisfactory to most elements except the left wing of the Labor party itself. All of the while, indeed, the moderate-minded cabinet had trouble with this left wing, as well as with the restless Liberals; and that it remained in office as long as it did is to be attributed solely to the considerable success of its foreign policy and to the fact that the Conservatives

<sup>1</sup> R. H. Soltau, "The British Political Scene since the General Election," *Amer. Polit. Sci. Rev.*, Nov., 1929.

<sup>2</sup> See p. 134 above.

did not covet its domestic job nor the Liberals want them to have it. Division in Labor ranks was thrown into high relief by Prime Minister MacDonald's virtual resignation from the Independent Labor party in 1930, and by the I. L. P.'s dramatic secession from the major party in the following year.<sup>1</sup> The truth is that a rift had been developing for a good while between the general mass of the party members and certain of their presumed representatives in the cabinet. Whatever they had been originally, MacDonald, Snowden, Thomas, and others had, in effect, become middle-class, Gladstonian liberals whose outlook and policies no longer satisfied the Labor rank and file; and only a situation bringing the disagreement to a head was needed to precipitate an explosion.

When the crash came, it not only rent the Labor party asunder, but unexpectedly gave the nation another coalition government. The situation producing it was a complicated one, with a huge impending budget deficit, depletion of the country's gold reserve, and a sharp fall of the pound in the exchange markets as principal factors, and with reduction of payments to the unemployed (part insurance, part relief) as the issue on which the cabinet finally split. Unwilling to recede from a policy of economy which he regarded as indispensable, Mr. MacDonald, in August, 1931, tendered the resignation of the entire ministry (without the knowledge of some of its members) and was promptly invited to make up a new one, the king himself—so it is believed—suggesting that it be constructed on coalition principles. The upshot was a "National" government, consisting, so far as the cabinet was concerned, of 10 members instead of the usual 19 or 20—four Laborites, four Conservatives, and two Liberals—with the remaining 54 ministers drawn almost entirely from Conservative and Liberal ranks. And so complete was the break between the former leader and his party that when the new cabinet almost at once came up for a vote of confidence, the Conservative and Liberal contingents in the House joined unanimously in extending it, while every Labor member save 12 was recorded in the negative. Every Labor minister, indeed, who had chosen to

g. The  
"National"  
government,  
1931—

<sup>1</sup> Organized by Keir Hardie in 1893, the I. L. P. not only antedated the Labor party, but was more strongly socialist and in general more radical. Until 1931, it existed as a distinct entity within the larger party, supplying, indeed, a heavy proportion of the latter's principal leaders.



stand by his chieftain was, along with him, expelled from the party.

The  
general elec-  
tion of 1931

Having procured from Parliament a remarkable statute on war-time lines empowering the government to introduce unspecified economies by order in council instead of by action of the two houses, and having further obtained the passage of a comprehensive emergency finance bill, the cabinet, in October, gave the country an opportunity at a general election to approve what had been done and also to confer a mandate, in the form of a blank check, for the future. Candidates who supported the existing government ran as Conservatives, National Liberals, or National Laborites; those who opposed it, simply as Liberals or Labor men; and the country was treated to the novel spectacle of persons like MacDonald and Snowden solemnly prophesying disaster if the Labor party came off victorious.<sup>1</sup> The parties supporting the government largely refrained from putting up candidates against one another, with the result that three-cornered contests dropped to the smallest figure in many years;<sup>2</sup> in two-thirds of the constituencies the fight was simply between a Nationalist candidate and a Laborite. The results surprised even the most experienced political forecasters. The Nationals captured the stupendous total of 554 seats, the opposition parties, only 61 (Labor, 52; Liberals and others, 9).<sup>3</sup> Moreover, the government's quota contained a total of 471 Conservatives, with only 68 Liberals, 13 Laborites, and 2 others, giving the Conservatives a clear preponderance of 327 over all other groups. Once more the party of Baldwin and Chamberlain was found holding most of the seats yet subjecting itself by coalition to alien leadership. Once more Mr. MacDonald was prime minister by sufferance of a party not his own. On two earlier occasions, he had governed by leave of the Liberals; now it was to be by leave of the Conservatives. Accepting the situation for what it was, he formed a new cabinet (raised again to a membership of

<sup>1</sup> They ran, of course, as National Laborites.

<sup>2</sup> *I.e.*, 206, as compared with 513 in 1929.

<sup>3</sup> The popular vote, in round figures, and ignoring the division of Labor and of the Liberals, was: Conservative, 12,000,000; Labor, 7,000,000; Liberal, 3,000,000. In view of the abnormal conditions described, these figures mean little as indices of party strength. For a penetrating contemporary analysis of the election, the crisis that produced it, and the problems raised by the entire experience, see H. J. Laski, *The Crisis and the Constitution; 1931 and After* (London, 1932).

20) containing, besides himself, four National Laborites, five National Liberals, and eleven Conservatives.

For two and a half years prior to the date of writing (March, 1934), the National government as thus reconstructed has guided the country's destinies. At any moment, the Conservatives—still led by Mr. Baldwin, notwithstanding efforts to unseat him—could have upset it; but they have had little incentive for doing so, and most of the time have been conspicuously loyal. Danger of explosion from within has been lessened by the extraordinary expedient of permitting individual cabinet members to express in Parliament, by speech and vote, views (notably on the subject of tariffs) contrary to those held by their colleagues.<sup>1</sup> The chief guarantee of endurance has, however, been the circumstance that, at bottom, the government is not a true coalition at all, but essentially a Conservative government following Conservative policies, even though headed by an erstwhile Labor man. No history of its handling of national affairs can be attempted here. Suffice it to say that both at home and abroad its measures, supported by a parliamentary majority which the prime minister himself once described as embarrassingly large, have been devoted principally to pulling the country back from the brink of financial disaster and promoting general economic betterment. It has imposed tariffs of a frankly protectionist character, and in a spirit of economic nationalism which an out-and-out Conservative government could hardly have surpassed; it has converted war loans so as to reduce the burden of interest; it has extended more generous credit arrangements to Russian buyers of British goods; and in 1932 it sponsored an Imperial Economic Conference at Ottawa directed toward economic rehabilitation throughout the Empire by means of mutual trade concessions. Partly because of measures such as these, partly (perhaps mainly) as a result of other factors, the country's situation by 1933 showed genuine improvement. The budget was balanced, unemployment less appalling, industry more active, foreign trade a little more vigorous.

On the whole, the coalition, to the date of writing, served the nation well. Meanwhile, however, the inevitable question had arisen as to how long a government set up under extraordinary

The National  
government's  
record

Future of the  
coalition

<sup>1</sup> For interesting comment on this departure, see H. J. Laski, *The Crisis and the Constitution*, 50-64.

conditions to deal with a national emergency was to continue. Experience with the Lloyd George war-time coalition indicated that a government of this nature is no less disposed to cling to office than is a straight party government, and any surviving doubt on the subject was dispelled toward the end of 1933 when not only Prime Minister MacDonald but leaders of other elements in the combination frankly announced the cabinet's intention to go on to the time of the next election and indeed, when that time should arise, to seek a fresh lease of life, as a means - so it was alleged--of saving the country from the danger of a Labor dictatorship. Other people, however, had different ideas. Continued high taxation was stirring criticism. The government, it was charged, was proceeding too slowly with its program of slum clearance and housing. Unemployment relief was too niggardly. The Ottawa Conference had proved disappointing, and the cabinet had been inept in its relations with the World Economic Conference and the Disarmament Conference—both apparent failures. The 1931 financial emergency having passed, the time was ripe, so the critics argued, for a resumption of regular party government. New measures were needed, and new men to devise and execute them. What would come of such reactions, no one could tell when these lines were written. Manifestly, however, the coalition was losing its "national" character as various elements supporting it, other than Conservatives, slipped one by one into opposition;<sup>1</sup> by-elections were resulting in reduced majorities or outright defeats; prestige was waning; and though the margin of votes at Westminster was still large, observers generally regarded the government's days as numbered.<sup>2</sup>

How party followings were distributed before the World War:

From even so brief an outline as the foregoing, it is manifest that after moving along on rather steady, and even predictable, lines for a hundred years, political parties in the British Isles were carried far out of their accustomed channels in the World War era, resulting in a political scene that has ever since been

<sup>1</sup> The National Liberals "crossed the floor" in November, 1933.

<sup>2</sup> Somewhat fuller accounts of party affairs in the period since the World War will be found in W. C. Langsam, *The World Since 1914* (New York, 1933), Chap. x, and G. D. H. and M. Cole, *The Intelligent Man's Review of Europe Today*, 402-416. The deeper problems raised by the events of 1931 are analyzed trenchantly in H. J. Laski, *The Crisis and the Constitution; 1931 and After*.

very different from that of pre-war times. Twenty-five years ago, the Irish Nationalists formed a minor party of considerable importance, localized in the central and southern portions of the disaffected smaller island; and the newly risen Labor party had a certain amount of strength in the industrial centers of England and Wales. Outside of this, the politically active population of the United Kingdom was divided not very unevenly between the major, historic Conservative and Liberal parties. In the Conservative ranks were found decidedly the larger part of the people of title, wealth, and social position;<sup>1</sup> almost all of the clergy of the Established Church, and some of the Nonconformists, especially Wesleyans; a majority of the graduates of the universities, and of members of the bar; most of the prosperous merchants, manufacturers, and financiers; a majority of clerks; approximately half of the tradesmen and shop-keepers; and a large proportion of the small landholders, and especially of the agricultural laborers. In the Liberal party were found, on the other hand, a goodly share of the professional and commercial elements, considerably more than half of what may be termed broadly the middle class, especially in the towns (but omitting clerks and other employees living on small fixed incomes), and at least half of the urban workingmen, although the latter were being drawn off in increasing numbers by Labor. The membership of the Established Church in England and Wales was preponderantly Conservative, but the Nonconformists were everywhere heavily Liberal.

Socially

Though less localized than the minor parties, the major parties, too, were decidedly stronger in some parts of the country than in others. Scotland was overwhelmingly Liberal. Half of its counties and boroughs invariably returned Liberals to the House of Commons; a third more were predominantly Liberal; three or four counties were politically doubtful; not more than that number were predominantly Conservative. The situation in Wales was practically the same, except that the Liberal preponderance was even more marked. On the other hand, England presented the aspect of a predominantly Conservative, or at all

2. Geographically

<sup>1</sup> This had not always been true. At one time, the Liberal party contained a powerful element descended from the Whig aristocracy of the eighteenth century. Nearly all of this portion (never completely fused with the middle and lower class elements brought in by the nineteenth-century reform acts) was, however, drawn off permanently by the secession of 1886. See p. 317 above.

events Conservative and doubtful, stretch of country, generously spotted over with Liberal areas, especially in the north and the midlands. The Conservative strongholds lay most largely in the south and east. From Chester and Nottingham to the English Channel, and from Wales to the North Sea—this was the greatest single area of Conservative strength, aside from a half-dozen Protestant counties in the Irish province of Ulster. From Oxford and Hertford southwards past London to the Channel, there was not a county in which the Conservatives were in danger of being outvoted.<sup>1</sup>

In general, those regions in which the people were engaged mainly in manufacturing and mining were Liberal, those in which they were engaged in agriculture were Conservative; and among agricultural districts, it was the most fertile and best favored, such as Kent, that were most heavily Conservative. Regions in which small landholders abounded were likely to be Liberal. Scotland was Liberal because of the traditional dislike of landlordism, the strong sense of independence and the sturdy democracy of the middle and working classes, the absence of the Church of England as an established church, and the weakness of the peerage in both numbers and influence. Wales was Liberal because of the preponderance of industry and mining, the scarcity of great landed estates, the radical temperament bred by an austere mode of life, and the strength of Nonconformism.

Changes in  
distribution  
since 1918:

As already remarked, the decade dating from the outbreak of the World War revolutionized a party situation which never in future can be restored. Seven years of coalition government disrupted old party ties and created new ones; millions of people temporarily or permanently changed their party allegiance; a major party which had been one of the mainstays of the old political order went on the rocks; a party which as late as 1914 had barely seven per cent of the seats in the House of Commons found itself in 1924 ensconced in the places of power in Whitehall. How did these weighty developments, and others of later days, affect the distribution of party followings? Passing over the election of 1931 as having been carried out under circumstances so

<sup>1</sup> See E. Krehbiel, "Geographic Influences in British Elections," *Geog. Rev.*, Dec., 1916. A map which accompanies this article shows in colors the distribution of party strength on the basis of composite returns for the eight parliamentary elections between 1885 and December, 1910.

abnormal that no clear evidence on the point can be derived from it, we find the situation of recent years somewhat as follows.

First of all, the Conservative party is still very strong with the rural population of the country, especially in southern England. After having lost nearly all representation from rural constituencies, the Liberals in 1929 picked up some 22 rural seats in England and doubled the small number that recent elections had left them in Scotland. But there is no assurance that they can do as well in future. Labor never captured a rural seat before 1922; and while somewhat over a decade ago the party launched a systematic effort to build up a following in the counties, the obstacles are weighty and the results as yet unimpressive. The Conservatives' strength is, of course, not entirely confined to the rural populations. The party can go into any general election, however, with as many as 50 rural seats in its pocket, and unless it suffers downright disaster in the boroughs (as it did in 1929) it has little to fear. In general, the same sections of society and the same vested interests adhere to the party as before the political reorientation of the past twenty years; and large accessions from Liberalism have been won, through the adhesion of people who gravitated over during the days of the war-time coalition, of others who see no future for the Liberal party, and of still others who aspire to political careers and consider that their only chance lies with the Conservatives. Many of these recruits come from what may be called broadly the middle class, especially in the towns; even more, proportionally, have been drawn from such limited wealth, leisure, and fashion as pre-war Liberalism was able to boast. On the other side, working-class, and also middle-class, Liberals have been strongly attracted to the reorganized and broadened Labor party; and the defections, chiefly of course in the towns, have been large—far larger than from the corresponding ranks of Conservatism. The upshot is that Liberalism has dwindled all along the line. One section or element, considered from the viewpoint of social status, economic interest, and professional connection, has suffered about as much as another. In its general structure, therefore, the party (disregarding the schism of 1931) remains a good deal as before; it is simply a smaller-sized edition of its former self. Geographically, its following is spread so thinly that in the last two general elections preceding that of 1931, it won seats only in a few scattered

1. Conserva-  
tives and  
Liberals

areas of northern and central England, in a few spots in Wales, and in the Scottish extreme north.

2. Labor

The Labor party arose out of discontent centering about specific grievances having to do with such matters as hours, compensation for injured workmen, assistance during unemployment, minimum wage scales, old age pensions, and reform of the poor law. Its social background was supplied almost entirely by the drawing together of the working classes in trade union, coöperative, socialist, and similar movements. Appealing almost exclusively to manual laborers, it at one time seemed not unlikely to decline in importance or to pass off the scene completely, once its demands on such subjects as those enumerated had been met. As, however, the party grew in numbers and resources, its conception of its mission widened, its objectives became less specific and local, its program grew to embrace broader and deeper forms of social and economic change stretching indefinitely into the future. Even before the World War, it ceased to direct its appeal exclusively to wage-earners, and since the reorganization of 1918, bracketing brain workers with manual workers, and opening wide the party doors to men and women of every station who sympathize with the party's major aims, its ranks have come to be representative to some degree of almost every important element and section of the British people. Manual workers still preponderate heavily, as they must always do; and the party is strongest where the two great bodies of manual laborers that thus far have been appealed to chiefly predominate, *i.e.*, the factory workers and the miners. But among loyal members are physicians, lawyers, bankers, businessmen, teachers, preachers, civil servants, scholars, writers, even capitalists and peers—as variegated and representative a lot of people as have ever been associated together in any other British party. Remembering the comparatively slight hold as yet gained in more purely rural sections, and passing over the fluctuations that come inevitably with successive elections even under normal conditions, the party's major strength, viewed geographically, is in the coal fields, in the manufacturing regions of southern Scotland, in the English north and midlands, and in southern Wales.

The party  
outlook

When these lines were written, Englishmen were concerned chiefly with the question of when, and under what circumstances,

the existing coalition would give way to regular party government. Back of this, however, loomed the weightier query—first raised by the war-time emergence of Labor as a major party—of whether the historic bi-party system would eventually be revived or, on the other hand, was definitely a thing of the past. The vast majority of English people not only prefer straight party government to coalitionism, but consider that the successful working of their historic parliamentary system requires the existence of two major parties and no more. With three main parties in the field, it is still possible for one of them not only to win a majority of the seats in the House of Commons but also to poll a majority of the popular vote, and thus to govern as a true majority party. Such a result, however, is extremely unlikely. More probable is a situation such as existed in 1924-29 in which one of the parties will find itself governing by virtue of a majority in the House, but on the basis of only a plurality of the popular vote. This likewise is reasonably satisfactory. But still more likely to develop are situations in which the party in power (1) will be found to have a mere plurality both in the country (as measured by popular votes) and at Westminster, or (2) will have (as was true of Labor in 1929-31) a plurality only at Westminster and not in the constituencies, or again (3) will have (as was Labor's position in 1924) no plurality either in Parliament or at large. In progressive degree, these three situations obviously mean minority government, and on that account all are looked upon by Englishmen with disapprobation. With more than two main parties in the field, however, the chances are strong that government will have to be conducted on one or another of the three bases enumerated—unless, of course, the equally objectionable device of coalition is resorted to. Hence the deep concern felt.

Reasons for  
anxiety

To ask whether Britain will in future have two main parties or three is tantamount to inquiring whether the Liberal party will endure; for there can be no doubt about the lasting qualities of its competitors. There is in every country a place for a conservative (not necessarily reactionary) party—a party that is not so much an army on the march as a garrison holding the fort, a party that represents the eternal stand of the “haves” against the “have nots.” In contemporary Britain, this position is filled appropriately by the party of Baldwin and Chamberlain and

Survival of  
Conserva-  
tism and  
Labor  
assured



Churchill—a party that normally commands the support of anywhere from 35 to upwards of 50 per cent of the electorate. Similarly, in every country there is, under modern conditions, a place for a party which perpetually challenges the existing order and fights for liberalizing changes. Such a party is British Labor. To be sure, this party has of late been passing through dark days. To have been twice in office without being able so much as to attempt to carry out its fundamental program is of itself depressing. Still worse are the consequences of the Trade Disputes and Trade Unions Act of 1927 and of the ministerial and electoral *débacle* of 1931. At the annual congress of 1933, the party's membership was reported as only about 2,000,000, the smallest since 1914, and contrasting with 4,500,000 in the peak year 1920. Party income was off by 40 per cent. That rehabilitation was on the way admitted, however, of no doubt. Trade unionism—ever the backbone of the party—was showing fresh spirit, and withal a sturdy resistance to radical doctrine such as might have discredited it with large elements on which the party's strength must depend. As mentioned above, parliamentary by-elections were showing heavy Labor gains. In the borough elections of November 1, 1933, Labor captured a total of 206 council seats in England and Wales, largely compensating for the 241 lost in 1931, and yielding Labor majorities in no fewer than 25 cities and towns. Manifestly, Labor was going to remain a major force in the country's politics; indeed, impartial observers considered it not impossible, as things were going, that the next general election would yield the party its long-sought parliamentary majority.

What of the  
Liberals?

With Conservatism and Labor set squarely over against one another, can a third party survive? Is there anything left for Liberalism to stand for or to do? One view is decidedly negative. The party of Bright, Cobden, Gladstone, Morley, Rosebery, Asquith, Lloyd George, has had a long and splendid career. But its work is done; the great causes for which it fought have been won. Meanwhile there has risen alongside of it a new party born of twentieth, rather than eighteenth and nineteenth, century conditions, and possessed of the enthusiasm, vigor, and idealism which the Liberal party once displayed but has lost. Between the conservatism and immobility of the Tories and the progressivism of Labor there is scant room for a middle-of-the-

road attitude, policy, or party. In point of fact, the antithesis between Conservatism and Labor is by no means so complete as this generalization assumes. There are Conservative ultra-conservatives, or "die-hards," a Conservative "center" typified by Mr. Baldwin, and a very considerable element of "young Conservatives" in whose policies much of Liberalism, and even something of Socialism, can be discerned. Similarly, Labor has its extreme and moderate wings. Nevertheless, there has been a good deal of disposition to consider that the party battle of the future is to be simply between Conservatism and Labor, and Liberals themselves, in many cases conceding this, have, as we have seen, been drifting heavily into the ranks of the one party or the other. Conservative and Labor strategy, *e.g.*, in resisting the Liberals' urgent demand for proportional representation, has long been predicated on the assumption and motivated by the hope that the third party will eventually be edged out of the political arena altogether.

On the other hand, the bulk of the Liberals that remain (and there are millions of them) do not admit the thesis of a dying party and, in spite of all that has happened, are bent upon going their own way. To be sure, they have suffered further backsets since 1931. The elections of that year split them into as many as three parties. One element supported and participated in the National government, although as indicated above it has lately gone into opposition; a second was in opposition from the first; a third, the "family party" of Mr. Lloyd George, also in opposition throughout, has but four seats in the House of Commons, but is of more consequence than might appear because when the former prime minister broke away he took his famous "fund" with him.<sup>1</sup> Though thus divided again, the Liberal forces, however, still have elements of strength and promise—a really large party following, able leaders, some financial resources, and issues, some of which have declined in importance, but others of which—notably free trade—were never more alive.

The proposal that the Liberal party simply give up the effort to keep going and join Labor *en masse* is too naïve to be taken seriously. The two parties indubitably have much in common; and the generally moderate tone of Labor policy—evidenced, for example, by the steady refusal to have anything to do with

<sup>1</sup> See p. 355 below.

the Communists<sup>1</sup>—would operate, as far as it went, to make coalition, and even amalgamation, easier. But the ultimate Labor goal, the socialistic state, lies at the end of a road which the majority of Liberals have no mind to travel. They know that the cautious policy of previous Labor governments was keenly disliked by important left-wing elements in the party, which still talk resolutely about attaining socialism and internationalism “in our time.” They know, too that even if they subscribed to everything that the party now gives prominence in its published appeals to the nation, they could have no assurance that more radical elements—already talking in terms of a Labor dictatorship—would not some day gain the upper hand. They recognize, of course, that Liberalism can have only a barren future as a mere neutral zone, a half-way house, between Conservatism and Labor. But they believe that during its present years of travail the party is gradually refashioning a faith of its own, and they conceive of the three parties of the future, not as standing to one another like three sections of the same straight line, with Liberalism in the central position, insensibly shading off into the other two, but as having the relation of the three angles of a triangle, each definitely opposed to the other two, yet each linked with the other two, and having some points in common with both.<sup>2</sup>

Whatever happens when regular party government is resumed, and especially when the parties again try their fortunes separately at the polls, will no doubt help to clarify a confused situation. Viewed objectively, however, the outlook for full restoration of the bi-party system within the measurable future seems less favorable than Englishmen generally prefer to think.<sup>3</sup>

<sup>1</sup> Only one Communist, it may be noted, has ever been elected to the House of Commons, and the cause seems to have made little headway, even during the recent years of depression.

<sup>2</sup> R. Muir, *Politics and Progress*, 6. The lines on which the Liberal party might be rehabilitated, as they appeared to a young Liberal leader in 1923, are set forth in interesting fashion in this book.

<sup>3</sup> For brief general accounts of the parties in recent times, including their principles and policies, see F. A. Ogg, *English Government and Politics*, Chaps. xxi-cviii, and references there given; H. Fine, *Theory and Practice of Modern Government*, I, Chap. xv; R. Muir, *How Britain Is Governed*, Chap. iv. Cf. L. Rogers, “The Three-Party System in British Political History,” *Curr. Hist.*, July, 1929; Lord Percy *et al.*, “The Future of Political Parties,” *Polit. Quar.*, Jan.-Mar., 1932; R. H. Tawney, “The Choice Before the Labor Party,” *ibid.*, July-Sept., 1932; and E. P. Chase, “British Political Parties in 1933,” *Amer. Polit. Sci. Rev.*, Feb., 1934.

## CHAPTER XVII

### PARTY ORGANIZATION

However firmly grounded upon common principles and interests, a political party in the long run achieves effectiveness only in proportion as it develops machinery for holding its members in line, formulating policies, selecting candidates for office, raising funds, winning recruits, and attracting the electorate to its point of view at polling time. Parties in some countries have developed much farther in this direction than in others; and in almost any country certain parties will be found to have gone quite beyond various of their competitors. Party organization reaches its apogee in such instances as the Fascists in Italy, the Communists in Russia, and the Nationalists (Kuomintang) in China, each of which monopolizes political power and is to all intents and purposes not only a party but also a government. Leaving out of account these abnormal situations, and having regard only for parties which exist alongside other parties, with which they contend on more or less equal terms, the countries in which party organization is most elaborate and stable are probably Great Britain, the British dominions, and the United States. Until the Hitler government broke up the party system in Germany in 1933, that country undoubtedly would have deserved to be included in the list.<sup>1</sup> The Netherlands, the Scandinavian countries, Switzerland, and, in another quarter, Japan, have also some parties that have attained a high degree of organization. In France, there is increasing organization as one moves from the highly volatile groups of the center toward both the right and the left. But in any event, the parties of Great Britain stand at, or near, the top; and in that country, the already extensive party mechanisms described more than a generation ago by the Russian scholar Ostrogorski<sup>2</sup> have in later days grown decidedly more imposing, more closely integrated, and more significant.

Party organization in different countries

<sup>1</sup> See pp. 781-783 below.

<sup>2</sup> In his *Democracy and the Organization of Political Parties* (New York, 1902), I, Pt. ii, Chaps. ii-ix, Pt. iii, Chaps. i, v-vii.

Even if no other forces had been at work, the doubling of the electorate in the past twenty years would of itself have entailed impressive extensions of party machinery.

British party  
machinery  
classified

With allowance for some rather important variations, all political parties in Great Britain are organized, broadly, on the same lines; and in the case of each, the machinery falls into two main parts, *i.e.*, that which is inside of Parliament and that which is outside. The parliamentary portion consists of three agencies or organs: (1) the group of party members in Parliament (more particularly the House of Commons) considered as a whole, and commonly referred to as the "parliamentary party"; (2) the leaders within this group; and (3) the whips. The extra-parliamentary portion comprises, mainly, (1) the local party organizations in the constituencies, and (2) the national organization including the highly important "central office"—built up historically by federating these local bodies.

Machinery in  
Parliament:

1. The par-  
liamentary  
party

In all parties, the parliamentary members enjoy a high degree of immunity from control by any agency or authority of the party outside. Especially true is this of the Conservatives and Liberals. The parliamentary party, and not any congress or committee of the nation-wide party organization, chooses the leader, who, when the party is in power, is the prime minister and when it is not in power is the leader of the opposition; and while the commoners may individually, as candidates, have pledged themselves before their constituents to stand for certain principles and to support certain policies, the group as a whole is free at all times to determine its course of action, independently of any instructions either from constituents or from party organizations outside of Westminster. Members may, of course, be held to an accounting when they go back to their constituencies for reelection. But there will be no disposition to deny them the legal and moral right to be guided by party decisions arrived at by the parliamentary group to which they belong. The situation in the Labor party is somewhat different, in that the party constitution requires the parliamentary representatives, singly and collectively, to "act in harmony with the constitution and standing orders of the party," and also enjoins that the national party executive and the parliamentary Labor party shall confer at the opening of each parliamentary session, and at any other time when either body may desire such con-

ference. This undoubtedly imposes some restraint. In practice, however, the parliamentary group tends to be a free agent; it selects the party leader, appoints its whips, and chooses its tactics exactly as do the sitting members of the other parties.

If the truth be told, it is not, in the case of any party, the parliamentary group as a whole that is specially important as a party agency, but rather the chiefs or leaders in that group. In the case of the party in power at any given time, this means the cabinet. It has been pointed out that the party system and the cabinet system arose simultaneously and in the closest possible relations. The earliest party organization was, indeed, the cabinet, and for the party in power the cabinet remains to this day the highest party authority. As such, it can brook no control by any outside organization. The parties out of power have, of course, no cabinet. But their parliamentary contingents contain an official leader and a number of other men of recognized importance who, if the party were to come into power, would compose most or all of the cabinet; and for purposes of party management these persons discharge substantially the same functions as if they were in ministerial office. The major fact about party organization in Parliament is, indeed, the absolute control of party policy by these leaders. In the case of lesser parties, the entire quota is occasionally convened in a caucus for deliberation on questions of policy. This was a common practice of the Labor group when it was small in numbers. But in the large parties this sort of thing is rare, being, indeed, almost unknown among the Conservatives. General meetings, are, indeed, sometimes held at one of the political clubs. They are commonly designed, however, only to give the leaders an opportunity to address, instruct, and inspire their followers, and rarely or never as occasions for general debate culminating in votes and decisions. The principal exception to this rule arises when the formal chief, *i.e.*, the main leader, of the party is to be selected. Even then, although general discussion takes place, the decision is likely to be made by a handful of outstanding members.

Each group of leaders has, in each house, the assistance of the party whips. These are in all cases members of the house in which they perform their duties, although by custom they take no part in debate. The government whips in the House

2. The party leaders

3. The whips

of Commons are regularly four in number, *i.e.*, the chief whip, who holds the office of Parliamentary Secretary to the Treasury, and the three Junior Lords of the Treasury.<sup>1</sup> They are, of course, ministers, and, as such, are paid out of public funds. The whips of the opposition parties, usually three in each case, are private members, named by the leaders, and unsalaried. The functions of the government whips consist, chiefly, in seeing that the ministry's supporters are at hand when a division on party lines is to be taken, keeping the ministers informed on the state of feeling among the party members in the house, bringing pressure to bear upon negligent or rebellious members, acting as intermediaries in making up slates for select committees, and serving as government tellers when a division is to be taken on party lines. "Stage managers," Ostrogorski calls these officials; "aides-de-camp, and intelligence department, of the leader of the house," they are termed by Lowell. The duties of the opposition whips are of similar nature, with allowance made for the differences arising from the fact that the leaders whom they serve are not in office but only hope to be.<sup>2</sup>

Organization  
outside of  
Parliament  
a product of  
the last hun-  
dred years

Outside of Parliament, party organization developed relatively late; local machinery in the constituencies made its appearance only after the Reform Act of 1832, and the first party organization to operate on a nation-wide scale was founded hardly more than 65 years ago. The reasons are not difficult to discover. Prior to 1832, voters in both parliamentary and local elections were few, and, in the counties at all events, scattered. As a rule, they had little of what we call group consciousness. Parliamentary seats belonging to "rotten" and "pocket" boroughs were dispensed as patronage or sold to the highest bidder; in many other constituencies, county and borough, there was but a handful of voters; only here and there—as in the borough of Westminster—was the electorate large enough to form any real basis for party groupings. The act of 1832, however, changed the situation considerably. Half a million persons were added to the electorate; the rule was introduced that no one should vote unless duly registered; and the constituencies were so reconstructed that in practically all cases the choice of representatives was thrown into the hands of a con-

<sup>1</sup> Conservatives and Liberals have two whips each in the House of Lords.

<sup>2</sup> M. Ostrogorski, *op. cit.*, I, 137-140; A. L. Lowell, *op. cit.*, I, 448-457.

siderable number of people. In numerous places where elections had previously been merely a matter of form there were now to be real contests, with the difference between success and failure measured in terms of the number of qualified and registered voters that could be got to the polls. The lesson for party leaders and supporters, national and local, was obvious: agencies must be created which would see to it that the new voters were registered, canvassed, and, when necessary, stirred to action when election time came around.

The device hit upon was the registration society, which thus became the earliest form of local party organization. Almost as soon as the Reform Act was on the statute book, societies of this nature, both Conservative and Liberal, appeared in certain constituencies, and by 1840 they were common throughout the country. At first they largely confined their activities to getting inexperienced, and often apathetic, voters on the parliamentary register and keeping them there, in so far as such voters could be depended on to support the candidates of the party. But presently they added canvassing voters (new and old) in their homes, supplying them with information about the candidates and the issues, persuading the hesitant, and rounding up the faithful at the voting places. When another million was added to the electorate in 1867, the responsibilities of these societies were augmented; and of course they were further increased in 1884. For a long time the societies did not attempt, except in isolated instances, to nominate candidates. Men were left to announce themselves to the voters; or, at most, the selections were made by a few influential leaders. Sooner or later, however, the local organization was bound to come to feel that this important function also lay within its province.

Early registration societies

This development was fostered by the rise of the caucus. The term "caucus" has a somewhat sinister connotation in American politics; many movements on this side of the Atlantic conceived and carried out in the interest of popular control in government have had for their object the overthrow of some kind of a caucus. But whereas the American caucus has usually been a self-constituted clique or faction operating on oligarchical lines, the British caucus was from the first a means of securing broader democracy. The initial appearance of the caucus in

Rise and spread of the caucus



its British form was in the city of Birmingham, where, during the sixties, the Liberals adopted the plan of assembling all of the party members in each ward in a caucus, each such meeting choosing a ward committee, which, as the machinery was perfected, began sending delegates to a central convention representing the entire city. The principal author of this plan was Joseph Chamberlain, then a Liberal, although destined to play his rôle as a national statesman under the Conservative banner; and it is interesting to note that Chamberlain had visited America and had some acquaintance with conventions, caucuses, and other party devices on this side of the Atlantic. The new scheme was looked at askance by many Englishmen as likely to prove a first step toward the rule of rings and bosses then notoriously prevalent in American cities. But it was proceeded with, and the general election of 1868 afforded convincing demonstration of its effectiveness. It will be recalled that Birmingham was one of a limited number of towns in which, with a view to minority representation, the Reform Act of 1867 required electors to vote for fewer candidates than the number of seats to be filled. Through its general committee, the Liberals' central association both nominated the candidates of the party and guided the electors in distributing their votes in such a way that all three seats were captured, and not only these but also the city council and the school board. The upshot was that the Birmingham plan of caucus and convention— of local party organization on the basis of the full party membership rather than simply of a small registration society, and with selection of candidates as well as promotion of their candidacy in the hands of the organization's central association— began spreading to all parts of the country, being taken up not only by the Liberals but also by the Conservatives, who were driven to it in self-defense.

Liberal local  
organization

Liberal organization on these lines naturally went forward faster in the towns than in the rural sections, because townspeople are more readily brought together and because the Liberal forces were predominantly urban. By the opening of the present century, however, there was a Liberal association in practically every constituency, rural and urban, in which the party was not in a hopeless minority; and this continues to be the case today. The National Liberal Federation, which in 1877 brought the local associations into a common nation-wide

organization, guides and advises in the formation and conduct of the local units. Aside, however, from requiring that their government shall be based upon popular representation, it lays down no positive regulations; and it is especially to be observed that the state seeks to regulate in no way whatever either these local associations or any other party organizations. Naturally, there is a certain amount of variation. Yet, in general, every rural parish has a primary association; every small town has a similar association, with an elected executive committee; every parliamentary division of a county has a council and an executive committee; every parliamentary borough is organized by wards and has officers and committees on the plan of the Birmingham caucus. In some cases the associations are open to men and women alike; in others there are separate, but coöperating, organizations for the sexes.

In local organization, the Conservatives were hardly behind their rivals, and in the formation of a nation-wide league of local societies they led by a full decade. With more money to spend, they eventually developed an even more elaborate network of local associations. As in the case of the Liberals, the authorities of the Conservative national federation recommend certain forms of organization, embracing mass meetings, committees, councils, and officials in such combinations as seem most likely to meet the needs of parishes, wards, county divisions, boroughs, and other political areas; and in the main these recommendations are carried out. In earlier times, both parties had considerably more success in organizing their adherents in the boroughs than in the rural sections, but nowadays the difference is less pronounced.<sup>1</sup>

It would be expected that after local associations attached to a particular party had grown numerous, effort would be made to combine them into some sort of a league or federation; and this indeed happened. The Conservatives led the way by organizing a National Union of Conservative and Constitutional

Conservative local organization

National party organizations and their nature

<sup>1</sup> Party organization prior to the rise of the caucus is treated in M. Ostrogorski, *op. cit.*, I, 135-160, and the effects of the Reform Act of 1832 on party activities are described in C. Seymour, *Electoral Reform in England and Wales*, Chap. iv. The rise of the caucus is dealt with in Ostrogorski, "The Introduction of the Caucus into England," *Polit. Sci. Quar.*, June, 1893, but a much fuller account is given in the same author's *Democracy and the Organization of Political Parties*, I, 161-240. The salient features are presented in A. L. Lowell, *op. cit.*, I, 469-478.

Associations in 1867, and their rivals countered ten years later with a National Liberal Federation. In due time, the Labor party was built up by federating trade union, socialist, and other local organizations; and to this day it remains a characteristic of English parties, as contrasted with American, that they are combinations, not of individuals directly, but rather of local or regional societies or associations. Ordinarily, one belongs to a given party by virtue of being a member of some local branch of it or some local group affiliated with it.

The party  
congress

The nation-wide organization of the three major parties is pretty much of a pattern, and so far as the Conservatives and Liberals are concerned, it can be described in few words. First of all, both older parties make provision for a national representative body, or party congress. The Conservatives call their congress the "Conference"; the Liberals call theirs the "Council"; but it is practically the same thing in both instances, and serves substantially the same purposes. Meeting once a year in some important center, the congress consists in both cases of delegates sent by the affiliated local organizations; and whereas formerly, in both parties, it sought to formulate principles and policies—somewhat on the lines of the platform-making carried on in American party conventions—it nowadays has no very important function except to elect certain party officials and committees and to afford opportunity for speeches by the party leaders in Parliament and for general discussion calculated to whip up party interest and promote party morale. The main leader of the party is of course chosen, not by the congress, but by the group of party members in Parliament. But there are committees to be selected (notably an executive committee in each case), and also presidents, treasurers, and secretaries.

Why plat-  
form-making  
by the con-  
gress did not  
develop

The experience of the parties with platform-making by the annual congress is interesting and instructive. It is not surprising that the party representatives, gathered in deliberative conclave, should have supposed it within their province to debate matters of party policy and to adopt resolutions concerning them, for the guidance of the men primarily responsible for the party's course in Parliament and before the country, namely, the ministers when the party was in power and the opposition leaders when it was out of power. We have seen enough, however, of the attitude and temper of the party leaders—

especially when in authority at Whitehall—to know that they would hardly relish such efforts to control their actions from the outside. Accustomed to full liberty to meet parliamentary situations as they arose, and to formulate the principles and policies to be pressed when under the necessity of going to the country for reelection, they could hardly be expected to take kindly to congress-made programs or platforms calculated to tie their hands.

Each national party organization had to make the discovery and adjust itself to the situation as best it could. Finding that the resolutions adopted by its congresses carried little weight in parliamentary circles, the Conservative National Union came to the conclusion that its usefulness lay in the direction of the voters rather than in that of the party leaders and law-makers. It could not make platforms that would have much force; it could not select the party chief who, when the party was in power, would be prime minister; it could not, in short, override the jealously guarded independence of the party organization in Parliament. But there were other and important things that it could do—things that had to be done if the party's morale was to be kept up and its strength maintained, and things for which the leaders at Westminster were glad enough to look to it. Finding its proper sphere, the Union set up at London a Central Office, with a paid staff, and built up what came in effect to be a highly integrated and essentially independent electioneering agency. Under the direction of a "chairman of the party organization,"<sup>1</sup> a principal agent, a director of publicity, and various other officials, the Central Office nowadays helps establish new local associations where they are needed, aids and encourages associations which are beset with special difficulties, prepares suggestions and instructions for local party committees and workers, distributes literature, raises money, provides popular lectures, collects and broadcasts information having party significance, and in sundry other ways keeps the local organization active and the whole party mechanism up to the level of efficiency required in a country where elections may come almost without warning. The office also compiles lists of persons

The Conservatives and their central office

<sup>1</sup> This party official is regularly a member of Parliament of cabinet rank, who therefore serves as an important link (much as the chief whip at one time did) between the party organization inside Parliament and that outside.

who would make acceptable candidates for parliamentary seats, and not only advises organizations in the constituencies upon the choice of candidates, but stands ready to fit out a needy or embarrassed constituency with a candidate from some other part of the country, and, if necessary, to see that such candidate is supported with speakers and funds.

Meanwhile, the National Union itself has dropped more and more into the background. First, it gave up trying to formulate policies and guide the party members in Parliament. Then it gradually surrendered to the Central Office all real responsibility for party propaganda, discipline, and finances. It still stands as a symbol of party unity, and, as has been said, its meetings aid in keeping up party morale. But one who is looking for the actual seat of authority in the national party organization of today will find it not at all in the Union, but rather in the Central Office.<sup>1</sup> The result has been (and the same is true in the other parties) an extraordinary centralization of power in the hands of a relatively small machine. If the cabinet has become a dictator in the domain of parliamentary life, the Central Office has equally become such in that of party politics. Democracy in party management has yielded to the prime necessities of the political battlefield--strong leadership, unity, and dispatch.

Parallel ex-  
perience of  
the Liberals

The Liberals have had a similar experience. As early as 1881, the Council began to try its hand at platform-making, and during the next decade it went farther and farther in this direction, even though it presently appeared that what the body was usually expected to do was to ratify resolutions prepared in advance by committees, rather than to work out its own statements of policy. A party out of office habitually talks freely about what it would do if it were in office, especially if it has no hope of being in office soon. This was the position of the Liberals for some years after 1886; and the Council's resolutions committed the party from year to year to a steadily lengthening list of reforms, culminating in the famous Newcastle Program of 1891, which, as one writer remarks, catalogued proposals which could hardly have been embodied in statutes in less than ten years by a cabinet with a large and homogeneous majority. The Gladstone and Rosebery governments of 1892-95 were repeatedly embarrassed because

<sup>1</sup> The increased significance of the Central Office in later years is commented on pointedly by J. K. Pollock in *Polit. Sci. Quar.*, June, 1930, pp. 163 ff.

of being unable to do things that the nation had been led to believe that a Liberal government would do, and from that time forth the party leaders saw to it that the Council exercised its platform-making functions under a decidedly stronger sense of restraint. Thus, equally with the less ambitious Conservative Union, the Liberal Federation failed to build up and maintain a great popular party legislature; as an organ for the popular control of party policy and of the acts of the party representatives in Parliament, it, too, has proved a sham. In neither party has a popular non-official organization been able to make headway against the bed-rock principle that in a cabinet system of government the parliamentary leaders must also be the party leaders. Like its Tory counterpart, furthermore, the Liberal Federation receded into the background while a Central Office in London became by all odds the most active and important instrumentality for promoting party organization, raising funds, selecting candidates, and carrying on or directing party propaganda.<sup>1</sup>

A stranger to English politics has been heard to say: "I can recognize your Tory party; I know where it begins and where it leaves off; the same is true of your Liberal party, though it spends most of its time in leaving off; but your Labor party is complicated. How does it work?"<sup>2</sup> Although it is doubtful whether the machinery of the Labor party was ever really as complicated as that of either of the older parties, there was a time when perplexity on this score might well have been pardoned, even in a near at hand observer. Nowadays, however, the important lines are clear enough; and it will be interesting to see where they lie, and how the mechanism compares with that of the rival parties just described. The history of Labor party organization falls into two main periods or stages, divided by the year 1918. Prior to that date, the party was not a broadly national organization having branches open to individual members in every constituency; rather it was a federation, nationally and locally, of trade unions, trades councils, socialist societies,

Structure of  
the Labor  
party before  
the war

<sup>1</sup> There is no satisfactory up-to-date treatise on the national party organizations. The accounts given in A. L. Lowell, *op. cit.*, I, Chaps. xxix-xxx, and M. Ostrogorski, *op. cit.*, I, 250-328, are, however, still of value. Mention may be made also of R. S. Watson, *The National Liberal Federation* (London, 1907), and J. K. Pollock, "British Party Organization," *Polit. Sci. Quar.*, June, 1930.

<sup>2</sup> Cited in H. Tracey (ed.), *The Book of the Labour Party*, I, 3.

and a few local Labor parties, and one became a member of it only by joining one of these component organizations. In the great majority of constituencies there was no way by which a person who could not be, or did not care to be, a trade unionist, and who also did not want to identify himself with a socialist society, could become an effective Labor party supporter. The organizers of the Labor Representation Committee of 1900 and their successors in the management of the Labor party had conceived of the movement as of and for the "working classes"; and they had thought of the working classes as composed primarily, if not exclusively, of manual workers.

The broad-  
ened basis  
after 1918

The quickening of the party resulting from war-time conditions brought, however, a broader view; and as soon as the Representation of the People Act of 1918 was on the statute book a special conference was convened at Nottingham and a new constitution adopted in such form as to open a gateway into the party for old and new voters alike, and especially for women, who would have had scant access to the party ranks under the old arrangements. The membership clause of the new frame of government reads as follows: "The Labor party shall consist of all its affiliated organizations, together with those men and women who are individual members of a local Labor party and who subscribe to the constitution and program of the party." Elsewhere the constitution made it clear that "workers by brain" were no less welcome than "workers by hand"; and any and all individuals who were prepared to endorse the principles of the party were to be encouraged to identify themselves with it by way of local Labor parties (neither trade unionist nor socialist as such), which were now organized in many additional constituencies. This departure marked a genuine rebirth of the party. The center of gravity was shifted perceptibly from the trade unions, hitherto completely dominant, in the direction of the local Labor parties; a party based on class gave way to a party grounded upon a broadly national constituency. Great accessions of numbers and strength followed, not only from the ranks of the new voters, but from people in all walks of life who for the first time saw their way clear to enroll as Labor supporters.

These sweeping changes in the basis and structure of the party were accompanied by an appropriate and significant

reconstruction of party machinery. In the counties and boroughs, the main developments were the reorganization of the local Labor parties and the establishment of such parties in large numbers of constituencies previously devoid of them. The local party became a working alliance of individual members and of members of the affiliated trade unions and socialist societies in the constituency;<sup>1</sup> some voters belong simply as individuals, others by virtue of belonging to an affiliated union or socialist organization. Even yet there are constituencies in which there is no local Labor party, the functions of such an organization sometimes being performed by a local trades council. But the number of local Labor parties continues to grow, especially in the rural constituencies, where the national party management is now spending most of its organization funds. Ample provision is made for women's sections of the local parties, and many such exist. A conspicuous feature of all British party organization is, indeed, the maintenance of separate committees, "sections," and even federations, for work among the female portions of the electorate.

The local  
Labor  
parties

The supreme governing authority of the national party is the Conference, which alone has power to amend the party constitution and standing orders. Like the Conservative Conference and the Liberal Council, the Labor Conference is a purely representative body, meeting once a year in a populous center selected by the national executive, though special meetings may be called, as happened in the late winter of 1917-18. Trade unions and other affiliated societies send one delegate for every thousand members for whom fees are paid;<sup>2</sup> each local Labor party in a constituency, and also each trades council, sends one delegate; and an additional woman delegate may be sent from any constituency in which the number of affiliated and individual women members exceeds 500. All members of the National Executive, and of the parliamentary Labor party, and all duly sanctioned parliamentary Labor candidates, are also members ex-officio, although with no right to vote unless sent as delegates. No delegate may represent more than

The national  
Conference

<sup>1</sup> In 1927 the Coöperative Union Congress voted for a formal alliance with the Labor party, and thereupon numerous local coöperative societies also became local units of the party.

<sup>2</sup> See p. 356 below.



one organization; all must be paid permanent officials or bona fide dues-paying members of the organization which they represent; and—although no formal pledge is exacted—all are honor bound to accept the constitution and principles of the Labor party. As in the congresses of other parties, proceedings are dominated by the executive—in American parlance, the machine—and while there is a good deal more platform-making than in the other cases, Labor finds, too, that its parliamentary members will not permit their hands to be tied in any very specific way by such expressions of opinion and desire on the part of the rank and file.<sup>1</sup>

The party  
executive

The National Executive, which is responsible for carrying on the general work of the party, consists, to all intents and purposes, of the Executive Committee and its auxiliary, the Central Office. The Executive Committee is elected annually by the Conference. Prior to 1918, 11 of the 16 members represented the trade-union element in the party. Since that date the body has had a broader basis, in accordance with the new form and character of the party itself. There are now 24 members, of whom 14 represent national affiliated societies (trade unions and socialist organizations) and five represent local Labor parties, with four additional women representatives, and also the party treasurer ex-officio.<sup>2</sup> Each affiliated national society is entitled to nominate one candidate for the first group (two, if the membership exceeds 500,000); each parliamentary constituency organization, through its local Labor party or trades council, may nominate one candidate for the second group; and each affiliated organization may nominate one woman candidate (two, if the membership exceeds 500,000) for the third group. All members, however, are finally elected by the full Conference, by secret ballot. The Conference also chooses the party treasurer, who, as has been indicated, becomes a member of the Executive Committee, and likewise the secretary,

<sup>1</sup> The Conference is entitled to indicate proposals which it desires to see included in the party program. It is, however, for the national executive committee (explained below) and the executive committee of the parliamentary Labor party to determine what shall actually appear in the party's election manifestoes.

<sup>2</sup> It is therefore possible now for the trade-union element to be in a minority; and indeed in the Committee first elected after the reorganization it had only 10 of the 24 members. Complaint continues, however, that the trade unions dominate the elections, and indeed the affairs of the party generally.

who serves as the principal permanent executive officer. The Committee sees to it that the party is represented by a properly constituted organization in every constituency where practicable; it gives effect to the decisions and orders of the Conference; it interprets the constitution and standing orders in cases of dispute, subject to a right of appeal to its superior, the Conference; it expels persons from membership and disaffiliates organizations which have violated the constitution or by-laws; and it supervises the multifarious work carried on at and through the party headquarters, *i.e.*, the Central Office, at London. The Committee meets as a rule for two or three days each month, and subcommittees are set up for special purposes. The Central Office is under the immediate direction of the party secretary, with whom are associated (among the other principal officials) an assistant secretary, a national agent, a chief woman organizer, and a finance officer, each with a suitable staff. Throughout the country, also, men and women district organizers and other agents work under Central Office direction. Finally, there are special departments having to do with research and information, press and publicity, international relations, and legal advice. Until 1921, these belonged to the Labor party alone; in that year they became joint instrumentalities of the party and the Trades Union Congress; in 1926, however, the Congress withdrew its connection with all except the fourth.<sup>1</sup> The research department has subcommittees on such subjects as land and agriculture, education, public health, finance, justice, and local government, and furnishes most of the material which is put out through the press and publicity department. Publications take the form chiefly of handbooks, pamphlets, and leaflets, rather than substantial volumes such as those issued a few years ago by the Liberals; and efforts to build up a vigorous newspaper press have not been notably successful. The only official Labor party daily paper, the *Daily Herald*, has never attained a large circulation, and its yearly deficits impose a heavy burden on its joint sponsors, the Labor party and the Trades Union Congress.

<sup>1</sup> The Trades Union Congress represents the industrial, as the Labor party represents the political, side of the labor movement. The former was first upon the scene, and in the earlier years of the century there was some duplication of effort, and occasional unfriendliness. The reconstruction of the party in 1918, however, paved the way for more satisfactory relations.

Selection of  
party candi-  
dates

Coming within the purview of the Executive Committee and the Central Office is not only the supervision of party organization in the constituencies, the promotion of party propaganda, the support of a party press, and the management of party funds, but the approval, and upon occasion the selection, of parliamentary candidates. The local constituency organizations have, indeed, the right of initiative and choice. But the central organization must coöperate wherever desirable in finding the best candidates; it must see that every candidacy is strictly in accordance with the party constitution; and no candidate can finally be adopted until he or she has received the National Executive's express endorsement. It is not often that the central organization finds it necessary actually to wield the veto power; but the right clearly exists. The main requirements made of aspirants are: (1) that they go before the electorate under no other designation than that of "Labor candidate," (2) that in any general election they include in their election addresses and emphasize in their campaigns the issues which the National Executive has selected from the general party program to be stressed in that particular contest, and (3) that they agree, if elected, to act in harmony with the party constitution and standing orders. Most of the candidates now selected by the constituencies are taken from a list endorsed by the National Executive. Once seated at Westminster, successful candidates become members of the parliamentary Labor party and subject to its discipline. They pass largely out of the control of the National Executive, and even of the Conference. They are, however, honor bound by the conditions and stipulations under which they have been accepted as candidates, and any tendency to insubordination ordinarily will be curbed by the thought that when another election comes round they will have no chance to be candidates again unless the National Executive is willing to give them the stamp of approval.<sup>1</sup>

Party finances:

1. Conservatives

Although all parties manage to secure a good deal of unpaid service, they cannot carry on their multifold activities without large outlays of money. All have more or less ample exchequers, upon which salaries of officers and agents, office rentals, clerk

<sup>1</sup> In practice, as has appeared elsewhere (see p. 300), Conservative and Liberal members, although not pledged in the same way, are quite as "regular" as are the Laborites.

hire, printing, postage, travel, assistance to local committees, and subsidies to candidates make heavy demands. The older parties have regularly relied for funds upon the contributions of members and supporters, made voluntarily, at least in theory, though often extracted from the donors by the importunity of whips or other workers. Neither the Conservatives nor the Liberals have ever had any general system of assessment under which either local party organizations or individuals were required to contribute, or under which the party managers could know, other than very roughly, how much would be available for their use in any given year.<sup>1</sup> Speaking broadly, however, neither of these parties was ever in dire straits for money—except in the case of the Independent Liberals of the early post-war years and perhaps the reunited Liberal party prior to the re-establishment of Mr. Lloyd George's leadership in 1927. The Conservative party has the support today, as in the past, of most of the country's men of great wealth, and it has been accustomed to be financed by a relatively small number of large (sometimes very large) contributions of landed magnates, brewers, bankers, and capitalists.<sup>2</sup> The public has no way of knowing what the party's resources are; but as a rule they afford every appearance of being ample, and an unfailing accompaniment of parliamentary elections is the complaint of opposing parties that the Conservatives enjoy the huge advantage that comes from having fuller coffers.

Even in their palmier days, the Liberals had less to draw upon; the rank and file of the party contained fewer men of wealth, and the organization maintained throughout the country usually gave evidence of frugality, if not of actual parsimony. In post-war years, this handicap was to some extent overcome by the circumstance that during the period of the Coalition government Mr. Lloyd George laid the foundations of a large political fund, which, through profitable investment in newspaper properties,

2. Liberals

<sup>1</sup> The rank and file of both parties have frequently, of course, been *invited* to make contributions, and in 1925 the Liberals, in a partially successful effort to raise a "fighting fund" of a million pounds, went so far as to urge upon all constituency organizations that they do their share, suggesting also various ways in which money might be obtained.

<sup>2</sup> In earlier times, soliciting and collecting party funds was one of the many tasks of the chief whip. Nowadays the work is done almost entirely by the Central Office. The same is true in the Liberal party.

continued to grow, and a considerable share of which he, in 1927, agreed to turn to the uses of the Liberal party. The actual sources of this fund have never been explained to everybody's satisfaction, and notwithstanding somewhat ambiguous statements to the contrary, the notion persists that there is a connection between the fund and the lavish bestowal of honors in Coalition days. At all events, the windfall enabled the party to reconstruct its shattered machinery and to place a full quota of candidates in the field at the election of 1929 with assurance that they would be given generous financial support. The schism of 1931, however, left not only Mr. Lloyd George, but also his famous fund, outside the breastworks of the party, which accordingly has been obliged to fall back once more upon monies raised by general subscription.

### 3. Labor

One will not be surprised to be told that the Labor party has proceeded on quite different lines. Lacking sources from which to draw large voluntary contributions, it derives its income almost entirely from affiliation fees. Trade unions, socialist societies, coöperative societies, and other organizations directly affiliated to the party pay into the central party treasury 3*d.* per member per year, with a minimum payment of 3*s.* In the case of trade unions, the amount due is calculated, not on the total membership, but on the number of members contributing to the union's political fund; and it will be recalled that, whereas under the Trade Union Act of 1913 this meant all members not "contracting out," *i.e.*, not definitely refusing to contribute to the political fund, under the Trade Disputes and Trade Unions Act of 1927 it means only such members as specifically indicate their desire to make such contribution. Trades councils affiliated to the party pay 3*s.* a year. Local Labor parties must charge individuals enrolled as members a minimum of 1*s.* per annum in the case of males and 6*d.* per annum in the case of females, and from the sums realized must remit to the Central Office 4*d.* per member. By all odds the most important source of revenue is the trade unions; and local Labor parties, in selecting candidates, are sometimes obliged to pass over abler men for the simple reason that they lack trade-union backing. Trade-union membership, however, fluctuates widely; the proportion of members contributing for political purposes has been sharply curtailed under the legislation of 1927; and the funds from this source

yield nothing comparable with the large centralized war chests of the Liberals and Conservatives. Labor outlays on full-time agents and other propagandist machinery, although increasing, are relatively small. On the other hand, Labor commands a greater amount of unremunerated service than either of its competitors.<sup>1</sup>

No description of English party machinery would be complete without mention of the rôle played by organizations which, while not parts of the formal mechanism, are nevertheless agencies for keeping party spirit alive, promoting party morale, and otherwise serving party interests. First of all, there are political clubs, primarily social in character, yet having a frankly party basis. Oldest of these is the Carlton Club, established in 1831 as a center of Conservative life and activity in London. Its splendid building in Pall Mall is the place where Conservative members of Parliament commonly gather for consultations; there it was, for example, that the decision was reached in 1922 to withdraw support from the Lloyd George coalition government. Other Conservative clubs, *e.g.*, the Constitutional and St. Stephens, will be found by any visitor to the Pall Mall district. The oldest Liberal organization of the kind, the Reform Club, ceased before the end of the nineteenth century to be a political club in the strict sense, but its place was taken by the National Liberal Club, which, along with other similar establishments in the capital, continues to serve all necessary purposes. There are also Conservative and Liberal clubs in principal cities throughout the country. Then there are ancillary leagues and societies. The most interesting of these is the Primrose League, founded in 1883 by Lord Randolph Churchill and named after what was supposed to be Disraeli's favorite flower. Elaborately organized, liberally financed, and supported by a membership of from one to two millions, it has been for almost half a century a prime agency of Conservative influence, especially at election time. There are also the Association of Conservative Clubs, the Young Conservatives' Union, the Junior Imperial League, and even the National Conservative Musical Union. The Liberals

Auxiliary  
party organ-  
izations

<sup>1</sup> The whole subject of party finances is treated in illuminating fashion in J. K. Pollock, *Money and Politics Abroad* (New York, 1932), Chaps. ii-x. Cf. R. Muir, *How Britain Is Governed*, 132-142. On the regulation of campaign expenditures, see pp. 193-195 above.

have the National Reform Union, the National League of Young Liberals, the Land and Nation League, the Eighty Club, and similar associations. Several of these organizations, both Conservative and Liberal, enroll members of both sexes and of all social classes. The Labor party is not without similar auxiliaries. The National Labor Club, founded in 1924, serves as a main social center in the capital; while the Trades Union Congress, the Independent Labor party, the Fabian Society, and the Social Democratic Federation—in their respective spheres, and under special conditions entailed by the elements which they represent—play rôles comparable with those which the Conservative and Liberal auxiliaries have made familiar to every observer of British political life.<sup>1</sup>

<sup>1</sup> There is singularly little up-to-date and really informing literature on the general subject of party organization in Britain. The first volume of M. Ostrogorski, *Democracy and the Organization of Political Parties*, treats the subject historically; and A. L. Lowell, in Chaps. xxv–xxxiii of his *Government of England*, describes arrangements as they existed upwards of a quarter of a century ago. A good deal can be gleaned from C. S. Emden, *The People and the Constitution* (Oxford, 1933), and P. G. Cambray, *The Game of Politics* (London, 1932), although the latter book—by a man who had long experience in the Conservative Central Office—deals principally with political tactics rather than political machinery. Information concerning present-day party organization has to be pieced out chiefly from party year-books and other such publications, supplemented by items and articles in newspapers and magazines. One could wish that either a native Bryce or a foreign Ostrogorski would turn his attention to the broad subject as it lies today, or, short of that, that numbers of investigators would undertake first-hand studies of selected phases, eventuating in monographs comparable with some which deal with party matters in the United States. It may be added that a few pertinent topics—nominations, campaign expenditures, and the formation of public opinion—have very recently been studied by young American scholars, who, however, in most instances, have not yet published their results. Two significant contributions of this character are J. M. Gaus, *Great Britain; A Study of Civic Loyalty* (Chicago, 1929), and J. K. Pollock, *Money and Politics Abroad*, previously cited.

## CHAPTER XVIII

### LAW AND JUSTICE

An American scholar has computed that the world has known 16 different systems of law, of which half are extant, either in unmixed form or in combination with other systems, and the remainder have wholly disappeared.<sup>1</sup> Foremost among the systems still in operation are (1) the Anglican, *i.e.*, the law of England, with extensions and modifications made in various parts of the English-speaking world; (2) the Romanesque, which, similarly, is the law of Rome as elaborated and readapted through the centuries in the numerous lands in which it has prevailed; and (3) the Mohammedan, developed in conjunction with one of the world's principal historic religions. Mohammedan law today covers broad areas in northern and central Africa, western and southern Asia, and the East Indies. Nevertheless, one could travel far and wide over the earth without ever setting foot in a country where the legal system is not derived wholly or mainly from the civil law of Rome or the common law of England. The law of practically all Europe west of Russia, of all Latin America except British Guiana, of Japan, of South Africa, of Louisiana, and even of Scotland, is at basis Roman; the law of England and Wales, of Ireland, of Canada (except Quebec), of Australia and New Zealand, of various lesser British colonies and dependencies, and of the United States (except Louisiana, Porto Rico, and the Philippines) is basically English common law. Peoples the world over, *e.g.*, the Turks and the Chinese, who find themselves engaged in recasting their legal arrangements almost invariably borrow heavily from one system or the other.

The world's  
systems of  
law

<sup>1</sup> J. H. Wigmore, "A Map of the World's Law," *Geog. Rev.*, Jan., 1929. Cf. the same author's three-volume treatise, *A Panorama of the World's Legal Systems* (St. Paul, 1928), and M. Smith, *The Development of European Law* (New York, 1928). The law here referred to is, of course, private law (civil and criminal), as distinguished from public law. Students of government are concerned mainly with the latter, especially the constitutional branch of it. Governments, however, make, interpret, apply, and enforce private as well as public law, and can hardly be fully understood without some attention to this phase of their work.



The English  
concept of  
law

A main objective throughout English constitutional development was the establishment of the rule of law, and, as we have seen, Englishmen who deplore the growth of "administrative justice" in our own day do so mainly on the ground that it interferes with the full operation of that historic principle.<sup>1</sup> As commonly construed, the rule of law means two things chiefly: (1) that no person may be deprived of life, liberty, or property except in consequence of an infraction of the law proved in open court, and (2) that no man (save only the king) stands above the law, and that therefore every one is liable, in case of such infraction, to punishment or exaction of reparation on lines laid down by law, regardless of his station or connections.<sup>2</sup> The question naturally arises as to what is meant by "law." So far as England is concerned, the answer is comparatively simple, *i.e.*, all rules, of whatever origin or character, which the courts will recognize and enforce. In Germany, France, and other Continental countries, jurists and philosophers long ago developed the idea of natural law as a system of principles, lying back of and superior to man-made rules, and deducible by reason from the inherent nature of man and things. As late as the eighteenth century, this concept found support in England as well, for example in the writings of John Locke. The vigor of the king's courts, however, in molding a great system of common law, together with the rise of a legally omnipotent Parliament presumed to translate the will of the people into binding statute, gave positive law as expounded by Hobbes and Austin a substantial victory over natural law. Today, principles or precepts which the courts will not enforce may have much importance as custom, and perhaps as morality; but, for Englishmen at all events, they are not law.<sup>3</sup>

General characteristics of  
English law

Certain general characteristics of English law as a system soon become apparent to any observer. The first is its purity. The law of many countries—Russia, Japan, China, Siam, Turkey,

<sup>1</sup> See pp. 139–141 above.

<sup>2</sup> For an interesting interpretation of the rule of law and what it means, see W. S. Holdsworth, *Some Lessons from Our Legal History* (New York, 1928), Chap. iii. The growth of power on the part of administrative authorities to render decisions in disputes that, accordingly, do not go to the courts at all considerably lessens the force of the first of the principles mentioned. See pp. 139–141 above.

<sup>3</sup> See A. L. Lowell, *op. cit.*, II, Chaps. lxi–lxii. Natural-law ideas are, however, far from dead, even in England and the United States, as is demonstrated in C. G. Haines, *The Revival of Natural Law Concepts* (Cambridge, Mass., 1930).

Persia—is a blend or composite. English law, to be sure, has not been immune from extraneous influences, even in the old home; when the seventeenth-century jurist Coke wrote in his *Institutes* that “our common lawes . . . have no dependency upon any forreign law whatever,” he was carried quite a bit too far by patriotic enthusiasm. Roman law exerted influence in the Middle Ages; likewise both canon, or church, law and the law merchant, or commercial law, of Continental Europe. An insular position, a long legal development before the foreign impact was felt, and the generally self-sufficing disposition of her people saved England, however, from being swerved far out of her accustomed legal channels. On the whole, “England is isolated in jurisprudence; she has solved her legal problems for herself.” A second characteristic—which would be anticipated by anyone familiar with the mode of growth and present form of the country’s constitutional jurisprudence—is the law’s lack of symmetry and logic. The Roman had an aptitude for orderliness, coherence, and formal consistency in which the Englishman is notoriously deficient. As a result, Roman law, and all law derived from it (notably the French system), has the polish, balance, and immobility of the pyramid of Cheops, whereas English law has, rather, the deviousness and casualness of a labyrinth.<sup>1</sup> This is not to say, however, that the latter is wanting in fundamental unity or in continuity. Formed originally of two streams—the Saxon and the Norman-French—which flowed together after the Conquest, English law developed thenceforth as a single national system with never a break down to our own day; and one can read one’s way backward in the text-books and commentaries—Blackstone in the eighteenth century, Hale and Coke in the seventeenth, Fitzherbert in the sixteenth, Littleton in the fifteenth, Bracton in the thirteenth, and Glanville in the twelfth—and find that although hardly a rule runs all the way through without new interpretations and applications, one is always reading about the same great body of law. “Eventful though its life has been, it has had but a single life.” And this suggests a final major characteristic, namely, that while no system of law

<sup>1</sup> This is no doubt one of the reasons why peoples like the Japanese, Chinese, and Turks who have set out to copy extensively from European law have usually turned to the French, German, Swiss, or Italian systems rather than the English. For purposes of imitation, the latter is decidedly baffling and inconvenient.

is ever wholly static, English law is preëminently a living, changing thing, dropping off here and taking on there, precisely as is true of those rules and usages of public law which we know as the constitution. "When we speak of a body of law," reads the opening sentence of a well-known history of the English system, "we use a metaphor so apt that it is hardly a metaphor. We picture to ourselves a being that lives and grows, that preserves its identity while every atom of which it is composed is subject to a ceaseless process of change, decay, and renewal."<sup>1</sup> The law is not an amorphous lump or mass; it is an organism.

Rise of the  
common law

In origin and content, the law as it stands today consists of two main elements, common law and statute—to which must be added a third, on a somewhat different basis of classification, *i.e.*, equity. The rise and expansion of the common law forms one of the most interesting chapters in all legal history. The story goes back to the Saxon period, when, notwithstanding the primitive conditions of the times and the lack of national unity, certain legal usages and forms became common to the entire realm, or at all events the larger portion of it. Growing up in unwritten form, these customs were in part, from time to time, promulgated, or declared, as "dooms," or ordinances, by the king and his witan; though it was always characteristic of the common law, as it is today, that much of it was simply carried in men's minds without being written down, at any rate in any orderly manner. After the Conquest, the displacement of local and diverse legal usages by customs general to the entire country went on at an accelerated pace, especially in the reigns of Henry II (1154-89) and his immediate successors. These were days of strong royal rule, when the king's government was reaching out in all directions for greater power, and, in particular, was establishing centralized authority in the important domains of finance and justice. Feudal and other local courts gave way to king's courts, conducted by royal judges—often men of genuine learning—who went out from London to all parts of the realm and dispensed justice in the king's name. Drawing their authority from a single source, forming a homogeneous staff, and with much incentive to and opportunity for interchange of information and ideas, these royal judges sought to discover and apply the usages

<sup>1</sup> F. W. Maitland and F. C. Montague, *Sketch of English Legal History* (New York, 1915), 1.

having the widest vogue. The decisions of one became precedents to be followed by others; and thus, woven of reiterated and respected judgments—in accordance with what the lawyers call *stare decisis*, i.e., the principle that the decision of a court sets up a presumptive basis of action in all analogous cases subsequently arising, especially when the same decision has been repeatedly made or affirmed over a long period of time—the common law became the great fabric of legal usage which, even by the thirteenth century, had grown to be one of the country's principal claims to distinction. It was a body of judge-made rules which, for the most part, had never been ordained by a king, or, of course, enacted by a legislature. Yet it had the royal authority behind it and was in every proper sense law, applied wherever the king's courts were held—which by the close of the Norman period meant every part of the land. Very different was the situation in France, where (partly because of the relative weakness of the king in the earlier Middle Ages) elaborate bodies of local customary law arose, but nothing of the kind for the country as a whole, and where, indeed, law continued fundamentally regional rather than national until near the end of the eighteenth century.

Other factors, of course, entered into the making of the great system of common law as handed down to modern times. In addition to contributions from Roman law, canon law, and the law merchant, a good deal was added by jurists and commentators. Sooner or later, legal-minded scholars were bound to find in the vast unassembled mass of principles and procedures a challenge to legal reporting and interpretation. As early as the twelfth century, Henry II's chief justiciar, Ranulf Glanvill, compiled a "treatise on the laws and customs of the English" (*Tractatus de Legibus et Consuetudines Anglorum*); and in succeeding centuries a long line of other jurists—leading up to Blackstone, author of the famous *Commentaries on the Laws of the English*, in the eighteenth—gathered up the significant rules of common law that had developed by the time that each, respectively, wrote, commented on them, cited cases on which they were based, and thus helped both systematize the law and shape the lines of its future development.

Meanwhile the law kept on expanding steadily—finding a new application here and building out in a new direction there—as, indeed, it continues to do in our own time. There was never

Contributions of the commentators

The common law beyond seas

a break in its history; political revolutions only left it more strongly entrenched than before. Furthermore, when, in the seventeenth and eighteenth centuries, Englishmen began settling beyond seas, they carried the common law with them as perhaps their most priceless possession. To the colonists in America it was an Englishman's heritage, a bulwark against tyranny, a guarantee of liberties and rights—so precious, indeed, that the sturdy patriots who composed the First Continental Congress solemnly declared Americans to be “entitled to it by the immutable laws of nature.” After the Revolution, it was no less valued than before, and, next only to language, it is no doubt today the most important joint possession of the United States and the mother land.<sup>1</sup> For Englishmen themselves, it was, and is, the law and custom of the realm since the time when “the memory of man runneth not to the contrary.” It still flows with pomp of waters unwithstood through all the tribunals where the English language is the language of the people.

Statute law  
and its rela-  
tion to com-  
mon law

During all of the time while the common law was taking form other law, however, was coming into being by a different process, *i.e.*, by enactment. Common law merely grew up; statute law was *made*. For many centuries the king promulgated laws with only the advice and assistance of his council. After the rise of Parliament, however, statutes gradually became the handiwork of that body, even though to this day they describe themselves as being enacted by the “king, Lords, and Commons in parliament assembled.” It is now more than six hundred years since Parliament began grinding out laws. Until a century or two ago, the bulk of this legislation was comparatively slight, and to this day Englishmen have restrained themselves in notable fashion from the orgies of law-making which fatten the statute books in America. Changing social and economic conditions since the middle of the eighteenth century have, however, called for freer exercise of the legislative power, and for a long

<sup>1</sup> The persistence of English common law in the United States obviously gives the subject a peculiar interest for American students. “It is indeed noteworthy,” remarks Lowell, “that the United States has kept in far closer touch with the legal than with the political thought of the mother country. English decisions have never ceased to be cited as authorities in American courts, while acts of Parliament have been copied with much less frequency, and political customs have scarcely been followed at all. The public institutions of the two countries are now very different, but their system of jurisprudence and their conceptions of law are essentially the same.” *Government of England*, II, 472-473.

time now a substantial volume has been added to the Public General Acts (formerly known as the Statutes of the Realm) with every passing year, single laws not infrequently exceeding in bulk the entire legislative output of a mediaeval reign. Some of this statutory law deals with matters not covered at all by the common law. But a large share of it has to do with subjects that are so covered, at least in part; and hence the common law is constantly being not only supplemented by statute, but rounded out, clarified, codified, amended, or even repealed by it, as the case may be. Treasured as the common law undoubtedly is, it enjoys no privilege or immunity as against Parliament. It contains no principle or rule which that body may not only reduce to statute but turn in a different direction or set aside altogether. Furthermore, when common law and statute conflict, statute always prevails; and no new development of common law can ever annul a statute.

All this would, however, give a totally false impression unless one hastened to add that by far the greater part of the law—especially civil, as distinguished from criminal, law—which the courts are called upon to enforce, in Britain and America alike, is common law; and so far as we can see, this will always be the case.<sup>1</sup> The common law is still the “tough legal fabric that envelops us all”; the statutes are only ornaments and trimmings. “The statutes,” says an English writer, “assume the existence of the common law; they would have no meaning except by reference to the common law. If all the statutes of the realm were repealed, we should still have a system of law, though, it may be, an unworkable one; if we could imagine the common law swept away and the statute law preserved, we should have only disjointed rules torn from their context, and no provision at all for many of the most important relations of life.”<sup>2</sup> Thus, no act of Parliament enjoins in general terms that a man shall pay his debts, or carry out his contracts, or pay damages for trespass or slander. Statutes do, indeed, have a good deal to say about

Common law  
still the more  
fundamental

<sup>1</sup> Rather less of the common law, relatively, remains in our American states than in Britain, mainly because of the immoderate output of our legislatures. The situation is, of course, not the same in all states. Much pressure is constantly being brought to bear upon law-makers to displace old and established rules of common law, which are alleged to be outworn, by legislation on more drastic or otherwise different lines.

<sup>2</sup> W. M. Geldart, *Elements of English Law* (London, 1912), 9.

the modes by which these obligations shall be discharged, but the obligations themselves are derived only from the common law.

Where the  
common law  
is to be found

Statute law, of course, invariably takes written form, and the acts of Parliament are to be found in imposing printed collections—the Public General Acts—to which, as we have seen, a fresh volume is added every year. But where shall one look for the common law? It grew up without dependence upon writing, and to this day there is no single code in which it is assembled, no text setting it forth in a comprehensive and authoritative way. This, however, does not mean that it cannot be taken down from the shelf and read, because in one way or another practically all parts of it have found their way into writing or print. The main source of it has been, of course, the decisions of judges, and ever since the reign of Edward I these have been “reported,” *i.e.*, recorded in writing—for two hundred years by lawyers who reported anonymously in the Year Books, and afterwards by others who reported under their own names in the Law Reports. Of almost equal importance, as has been indicated, are the works of learned jurists, commenting on the principles of the law and citing the cases from which they were derived or by which they were sustained. Of some importance, too, are the reported decisions of courts in other countries in which a system of law derived from the English is administered, such decisions naturally not having quite the weight of those handed down in Britain, but yet occasionally being very influential. In one way or another, the common law therefore turns out not to be unwritten law, except in the sense that it was never textually enacted as is a statute. Some small branches of the common law have, indeed, been codified and given statutory form, among them the law of partnership, the law of sales, and the law relating to bills of exchange.<sup>1</sup>

<sup>1</sup> A distinguishing feature of the law of France, Germany, Italy, and other Continental countries is the very large extent to which it is gathered into great systematic codes—civil codes, criminal codes, penal codes, codes of civil procedure, codes of criminal procedure, commercial codes, etc.—which at intervals are overhauled and extended with a view to bringing them to date. See pp. 594–597 below. There are no general codes of this nature in Great Britain, not even codes of procedure, but only isolated codifications of small and scattered branches of civil law as mentioned above, together with numerous statutes which in effect codify, segment by segment, a very considerable part of existing criminal law. For an argument by an English jurist that the whole body of law should be codified, see M. Amos, “Essays in Law Reform: Should We Codify the Law?” *Polit. Quar.*, July–Sept., 1933.

A third great branch of English law is equity; for although the lawyers speak of law *and* equity, they do not mean to imply that equity is not law. What equity is, and how it is related to the other parts of the law, will become clear, at least in a general way, if we note how the system came into existence. The story begins far back in Angevin, if not indeed Norman, times, when people who thought that the application of the rules of common law in cases in which they were interested had worked injustice, or when they felt that their cases were not covered, or were only imperfectly covered, by the common law, fell into the practice of petitioning the king for rulings and remedies suited to their particular situations. In days when the king was the maker of laws and in a very literal sense the fountain of justice, there was no reason why he should not take cases out of the hands of the regular courts and decide them himself—no reason except one, namely, that petitions poured in so fast that to attend to all of them would have meant an intolerable expenditure of time and energy. Solution of this difficulty was, however, readily found in arrangement for a proxy. The king had a chancellor who, as we have seen, was the principal secretary, and it was easy enough for him to turn over to this subordinate the actual examination of the petitions, and in time the answering of them as well. Not only was it easy, it was also logical; for the chancellor in those days was almost always a bishop or other ecclesiastic (hardly anybody else could qualify for secretarial duties in the Middle Ages), who might be presumed to be an especially good judge of questions of justice, morality, *equity*, such as were usually involved in the requests that came in. “Keeper of the king’s conscience,” the chancellor came to be called, even before the fourteenth century. Like the king himself, however, the chancellor had other things to do, so that presently it became necessary to appoint assistants, “masters in chancery,” to aid him in the work. In the end, the natural thing happened—a regular court emerged known as the court of chancery.

Equity:

1. Why  
needed

The origin of the rules which form the present body of law known as equity can now be surmised. Precisely as the itinerant justices originally went out through the country deciding cases individually on their merits, but gradually developed rules of common law according to which cases of similar nature were

2. How it  
arose



regularly decided in the same way, so those who dispensed justice in the chancery built up rules of equity. Equity is case law, equally with the common law; indeed it is a species of common law—a sort of supplement or appendix to the common law, “filling up its defects, correcting abuses in the conduct of persons who resorted to it for fraudulent or oppressive purposes, and actually, though with caution, setting itself up as a rival to the common law courts by offering superior remedies, even in cases in which the common law professed to afford relief.”<sup>1</sup> Beginning on relatively simple lines, it broadened out in time into a vast system of principles, rules, precedents, and implications, so intricate that a lawyer had to devote much hard study to the subject if he wanted to practice in an equity tribunal. In fact, at one time, chiefly the sixteenth century, equity waxed so important as to threaten the supremacy, if not the very existence, of the common law. It is still a huge body of living law, the subject of ponderous text-books, the theme of courses in law schools, the chosen domain of many a specialist in legal practice. It shows somewhat more influence of Roman legal principles than does the common law; it has a procedure largely its own; and although no longer administered in Britain in tribunals separate from the common law courts,<sup>2</sup> it is as distinct a body of law as it ever was.

3. Relation  
to other parts  
of the law

If it be asked what the relation of equity now is to the rest of the law, the answer is: first, that it has no relation at all to the criminal law, being confined strictly to civil controversies; second, that it applies exclusively in certain kinds of civil cases, *e.g.*, those arising out of the administration of property by a trustee; third, that the great bulk of other civil cases are dealt with normally under the rules of law rather than under those of equity, the latter being appealed to, if at all, only with a view to correcting alleged omissions or injustices of the regular law courts; and fourth, that in several kinds of cases redress may be sought either at law or in equity as the plaintiff prefers.<sup>3</sup>

<sup>1</sup> E. Jenks, *The Book of English Law* (London, 1928), 41–42.

<sup>2</sup> See p. 371 below.

<sup>3</sup> The standard history of earlier English legal development is F. Pollock and F. W. Maitland, *History of English Law to the Time of Edward I*, 2 vols. (Cambridge, 1898). An equally notable work, covering practically the entire field chronologically, is W. S. Holdsworth, *History of English Law*, 9 vols. (2nd ed., London, 1922–26). The first volume of this great treatise contains a history of English courts

Turning to the judicial machinery through which the law is interpreted and enforced, we come at once upon three major facts. The first is that no one system covers the whole of the British Isles, nor of course the Empire at large. Carrying over into the union of 1707 her previous law and courts, Scotland has seen her criminal law largely assimilated to the English, but has preserved her earlier civil law (based on Roman jurisprudence) almost intact; and she retains a judicial system which is not at all on the English model. Ireland likewise, at the union of 1801, was guaranteed her historic law and courts; and, although in both matters she came into rather general conformity with her powerful neighbor, there were at all times dissimilarities, which in the Free State area have of late tended to increase. The court system described in the following pages is to be understood, therefore, as that of England and Wales alone.

General features of the system of courts:

1. No single system throughout the British Isles

2. Absence of administrative courts

In the second place, there is in Britain no separate set of administrative courts such as parallels the hierarchy of ordinary courts in France, Germany, and other Continental countries. There is, to be sure, administrative law; that is to say, there are accepted principles and usages which apply in fixing relationships and settling disputes between administrative officers (acting in their public capacity) on the one hand and private individuals or corporations on the other. Wherever administration and law exist side by side, there must be administrative law. But whereas Continental nations maintain a full equipment of separate courts to handle cases in which law of this nature is applicable, neither England nor any other English-speaking land has more than an occasional special tribunal of the kind. In these countries, cases turning upon the validity of acts of government officials regularly go to the same courts as cases of any other kind. An Englishman and a Frenchman are capable of debating from morn till eve the relative advantages of the two plans. The Frenchman will say that the dignity from the Norman Conquest to the present day; the other volumes deal exhaustively with the development of legal doctrine and the general history of the law. Three excellent introductions to both the history and content of the law are F. Jenks, *The Book of English Law*, cited above; W. M. Geldart, *Elements of English Law* (London, 1912); and H. Potter, *An Historical Introduction to the English Law and Its Institutions* (London, 1933). Other convenient volumes include T. F. T. Plucknett, *A Concise History of the Common Law* (Rochester, 1929); R. Pound, *The Spirit of the Common Law* (Boston, 1921); C. K. Allen, *Law in the Making* (rev. ed., Oxford, 1930); and E. Parry, *The Drama of the Law* (London, 1929).

and authority of the government require that its officers shall not be haled into the ordinary courts—that whether it be in the instance of a prefect who exceeds his powers by closing a factory because of unsanitary conditions or in that of a policeman who, pursuing an offender, injures an innocent bystander, the resulting dispute should be heard and adjusted by a tribunal under the control of the administrative, rather than the judicial, arm of the government, and by a procedure differing in various respects from that employed in the regular courts. The Englishman will boast that it is a token of liberty for the citizen to be able to summon public officials—any public official, indeed, except the king himself—before the ordinary courts, and will suggest that in a French administrative court, composed of administrative agents of the government, a plaintiff must surely find it difficult to get a sympathetic hearing of his grievance. To this the Frenchman will reply (quite correctly) that as a matter of actual experience the administrative tribunals on one side of the Channel render judgments against the government quite as freely as do the ordinary courts on the other side, and that—and, from a practical point of view, this is a decidedly important matter—if a plaintiff receives an award of damages under the French system, the judgment is against the government, and therefore enforceable, whereas an award rendered under the English system is only against the offending official personally, from whom, likely as not, it will prove impossible to obtain actual redress. Each plan, of course, has its advantages; and it should be noted not only that in both England and the United States there has been an extensive development of “administrative justice,” involving the settlement of disputes turning on points of administrative law by such agencies as the Ministry of Health in the one instance and the Federal Trade Commission in the other, but also that the Continental plan is nowadays regarded a good deal more sympathetically throughout the English-speaking world than a generation ago.<sup>1</sup>

<sup>1</sup> This change is well illustrated by the admission of Dicey, in the 8th edition of his *Law of the Constitution* (London, 1915), that the hostile opinions expressed in earlier editions of his book were based on misinformation. On the administrative courts of France, see pp. 610–616, and of Germany, p. 792, below. The pros and cons of the administrative court system are summarized conveniently in J. W. Garner, *Political Science and Government*, 785–791. A valuable survey of the entire

A third main feature of the judicial system of England and Wales is the unity which prevails in the system of courts. This was not always the situation. Two generations ago, the country was cluttered up with unrelated, overlapping, and sometimes quite unnecessary tribunals—civil courts and criminal courts, courts of equity and courts of common law, probate courts, divorce courts, ecclesiastical courts, and what not. All sorts of trouble resulted. Cases multiplied in which it was difficult to determine which court had jurisdiction; each type of tribunal had its peculiar forms of practice and procedure; even the trained lawyer threaded his way through the maze with difficulty. Reform, however, came hard; more than 50 different reports, official or professional, contributed to discussion of the problem during a half-century of effort to find a way out of the tangle.

3. Integration of the courts in England and Wales

Opinion finally became sufficiently crystallized to permit remedial action, and, mainly between 1873 and 1876, the entire judicial establishment was reconstructed on simpler and more logical lines.<sup>1</sup> Practically all of the courts except those of petty jurisdiction were brought together in a single, centralized system. Tribunals which had been separate, and indeed rivals, became branches or subdivisions of a single Supreme Court of Judicature; law and equity jurisdictions were combined in the same courts; the lines of appeal, on both law and fact, were laid down with new definiteness; the fitness of the House of Lords for its judicial duties was increased by the addition of specially appointed lords of appeal in ordinary; the work of justice in all of its phases and branches was toned up and reintegrated. Under the administrative direction of the Lord Chancellor, the Supreme Court of Judicature—divided into (1) a Court of Appeal and (2) a High Court of Justice, organized in three trial divisions, (a) Chancery, (b) King's Bench, and (c) Probate, Divorce, and Admiralty—was to perform combined appellate and trial functions, in both civil and criminal cases, which in other lands occupy a much larger number of tribunals. Beneath this Supreme Court, a set of so-called county courts dating from 1846 was assigned the duty of taking care of civil actions, and similarly a

subject is F. J. Port, *Administrative Law* (London, 1929). Cf. M. Dimock, "The Development of American Administrative Law," *Jour. of Compar. Legis. and Internat. Law*, Feb., 1933.

<sup>1</sup> Chiefly by the Supreme Court of Judicature Act of 1873.

series of "assize" courts (presided over by travelling judges sent out from the High Court at London) the task of hearing and deciding criminal cases. At the top, the House of Lords, after temporarily losing its judicial functions altogether, became again the court of last resort for the hearing of appeals on questions of law from the highest tribunals of both civil and criminal jurisdiction. From that day to this, no major changes in the scheme have been found necessary.

Civil actions: For practical purposes, all cases that come before the courts may be classed as either civil or criminal. A civil action is a proceeding brought by a private citizen, or by an official in his private capacity, to obtain redress from another person, official or private, for a wrong—slander, trespass, breach of contract, infringement of patents, and the like—alleged to have been committed against the bringer of the action, or "plaintiff," by the person against whom the action is brought, or "defendant." In such a proceeding, the dispute is not between the crown and its subject (as it is in a criminal action), but between one of the crown's subjects and another, and the function of the public authorities is merely to judge, *i.e.*, to determine the merits of the controversy. The parties may at any time agree to give up litigation and reach a settlement out of court, a thing which can never be done in criminal proceedings.

1. In the  
county courts

The court in which a civil action will be brought depends mainly on the amount of the claim. If the sum is less than £500, the suit will probably be instituted in a county court. The so-called county courts of the present day, established by act of Parliament in 1846, are, however, in reality no part of the county organization, and the area of their jurisdiction is a district which not only is smaller than the county but bears no relation to it. There are in England and Wales at present some 450 of these districts, each with its own "court house"; and to each of 55 circuits into which the districts are grouped the Lord Chancellor assigns one judge, who holds court in each district of his circuit approximately once a month. Notwithstanding that Englishmen are supposed to be less litigious than most other peoples, the volume of business to be transacted is indeed formidable; no fewer than a million and a quarter cases are disposed of every year. Only a few of the most important, however, are actually handled by the judges personally. In every place where a county

court sits, an official known as the register is in charge of the records of the court; and to him it falls to dispose of the great majority of cases by influencing withdrawals or effecting compromise, without ever referring them to the judge at all.

Procedure in the county court is simple, both plaintiff and defendant frequently conducting their cases themselves. Where the amount in dispute exceeds £5, either party may demand a jury (which for this purpose consists of eight persons); but this is rarely done. Where there is a jury, it finds a verdict on the facts proved, under the direction of the judge; where there is none, the judge decides on the facts and on the law, and in either case he gives a judgment for the plaintiff or the defendant, which is enforced by seizure of the property of the party who fails to obey it, or even by imprisonment. The object of civil proceedings is, however, compensation, not punishment. On a point of law, an appeal can be taken to a "divisional sitting" of the High Court of Justice, though no farther without leave of the latter or of the Court of Appeal. On matters of fact, there is technically no appeal from the verdict of a jury. An application may be, and often is, made, however, to a divisional court to order a new trial on the ground that the judge instructed the jury wrongly, or that the jury's verdict was palpably not supported by the evidence before it.<sup>1</sup>

Where the plaintiff's claim exceeds the jurisdiction of the county court, he must, and, even if it does not, he may, bring his action first of all in the High Court of Justice. As already indicated, this High Court is organized in three divisions—Chancery, King's Bench, and Probate, Divorce, and Admiralty. In theory, any kind of civil action can be begun in any one of these divisions; and there is no limit to the importance of the actions that may be tried there. In practice, each division retains the kind of business that it inherited from the tribunals out of which it was formed. Under varying conditions, too complex to be detailed here, the judges (whose number is also variable) sit singly and in groups—although never as one body—at the capital<sup>2</sup> and on circuit. Appeals on points of law are

2. In the  
higher courts

<sup>1</sup> On the county courts, see S. Rosenbaum, "Studies in English Civil Procedure; the County Courts," in *Pa. Law Rev.*, Feb., Mar., Apr., 1916; *Report of the Lord Chancellor's Committee on the County Courts*, Cmd. 431 (1919).

<sup>2</sup> At the Law Courts, in Fleet Street.

carried from the divisional courts to the Court of Appeal. Technically, there is no appeal on questions of fact, but here again an application may be made—to the Court of Appeal, of course—to order a new trial. Beyond the Court of Appeal the dissatisfied litigant has still one more appeal on questions of law, *i.e.*, to the House of Lords, provided he can stand the delay and expense.

**Criminal  
actions:**

A criminal case is one in which a person alleged to have committed an offense, such as murder, theft, or forgery, is proceeded against in order that, if found guilty, he may be punished. As a rule, such a case arises out of a complaint by a private individual or an arrest by a police officer; and it may be conducted—that is to say, the accused may be “prosecuted”—either by a public official, such as the Director of Public Prosecutions, or by a private person.<sup>1</sup> In any event, it is carried on in the name of the crown and involves four distinct steps or processes. First, there must be a definite accusation by a person who professes to know of the commission of the offense. Then there must be proof of the facts. After that there must be an authoritative statement of the rule which the offender is alleged to have broken. Finally, if the offense is proved, there must be condemnation and punishment. In primitive forms of justice, all of these steps are likely to be taken by the same person. The avenger is accuser, witness, judge, and executioner in one. In civilized justice, however, it is axiomatic that the several steps shall not only be separated in time, but shall also be taken by different persons.

**1. Before the  
justices of the  
peace**

When a person in England is accused of having committed a criminal offense, he is formally summoned, or arrested and brought, first of all before one or more justices of the peace, or, in London and the larger boroughs, before a special type of justice, known as a “stipendiary” magistrate because, unlike an ordinary justice, he receives a salary. Dating from the early fourteenth century, the office of justice of the peace has played a very important rôle in the development both of local administration and of justice. “The whole Christian world,” declared Coke, “hath not the like office, if truly executed.” The normal field of operations of the justices is the county, although certain boroughs have also a “commission of the peace”; and aside from a few persons who attain the office on an *ex-officio* basis, the

<sup>1</sup> Following Continental usage, all criminal prosecutions in the United States are carried on by public prosecutors, such as district or state’s attorneys.

justices in any given county are appointed "at the pleasure of the crown" by the Lord Chancellor, usually on recommendation of the lord lieutenant of the county, who himself is chief of the justices and keeper of the county records. In many counties the list of justices contains 300 to 400 names; in Lancashire it reaches beyond 800; and the number in the country as a whole is hardly short of 20,000. But almost half of the appointees never take the oath required to qualify them for magisterial service, and the actual work is performed in each county by a comparatively small number of persons. As has been indicated, the justices serve without pay; but the office carries much local distinction, and appointments are widely sought. Formerly, the justices were, in the main, country gentlemen; but men (and, since 1919, women also) are now appointed freely from all professions and social classes, with the result that the magistracy is far less aristocratic than even a generation ago.<sup>1</sup>

When the accused is brought before the "J. P.," that official can himself dispose of the case if the offense is a minor one, *e.g.*, neglecting to take out a license or riding a bicycle after dark without a light. But he cannot impose a higher penalty than 20 shillings or sentence to imprisonment for more than 14 days. If the offense is of a more serious nature, the justice's duty is, in the first place, merely to see whether there is a *prima facie* case against the accused. For this purpose, he hears the evidence, usually sworn testimony, of the prosecutor and his witnesses. There is no jury, and the accused need not make any statement or offer any defense unless he likes. If, after the hearing, the justice feels that no *prima facie* case has been made out, *i.e.*, that no jury would convict even if the prosecutor's evidence were unchallenged, he dismisses the charge, and the accused goes free. If, however, he thinks that a *prima facie* case has been established, he "commits the prisoner for trial," and decides whether to let him out on bail or to have him confined to await further proceedings.

The court in which the trial will take place is determined mainly by the seriousness of the case. A large and increasing

<sup>1</sup> C. A. Beard, "The Office of Justice of the Peace in England," *Columbia Univ. Studies in Hist., Econ., and Public Law*, No. 1 (New York, 1904). The office of justice of the peace has so declined in the United States that there is grave doubt whether it ought to be continued. Cf. C. H. Smith, "The Justice of the Peace System in the United States," *Calif. Law Rev.*, Jan., 1927.



number of offenses, including petty assaults and thefts, small breaches of public order, and other minor misdemeanors—and even graver offenses if the accused wishes, or if it is a first charge, or if he is under age—are “punishable on summary conviction.” The court of summary conviction is composed of at least two justices of the peace (usually resident in the immediate neighborhood), and is known as “petty sessions.” The trial is public and without a jury, and the accused is given full opportunity to be heard and to have the benefit of counsel. If the court finds the man guilty, it imposes a fine or a limited period of imprisonment. He may, however, appeal to “quarter sessions,” which consists of all the justices in the county (meeting quarterly) who have taken the oath and who care to go to the trouble of attending. Here his case will be heard again from beginning to end.

2. In the as-  
size courts

In graver cases the accused is proceeded against by formal “indictment,” or written statement charging him with a definite crime committed in a particular way; and he is entitled to a copy of this indictment before his trial. An indictment case is tried either before quarter sessions or “at assizes,” assize courts being held three times a year in all counties and four times in certain cities, and presided over normally by a judge of the High Court of Justice who goes out “on circuit” for the purpose and is still received in every town which he visits by a procession of officials headed by halberdiers and trumpeters. Wherever the trial takes place, the accused is entitled to have his fate decided by a jury of twelve of his countrymen, chosen at random by the sheriff from a list of householders compiled by the local authorities; and he has an almost unlimited privilege of “challenging,” *i.e.*, objecting to, the jurors selected. It is the business of the judge (or judges) throughout the trial to see that the rules of procedure and evidence are followed; and after counsel for both sides have completed the examination of witnesses and have addressed the jury, the presiding judge sums up the case and gives the jurors any instructions about the law that may be necessary to enable them to arrive at a just verdict on the facts. If the jury finds the prisoner not guilty, he is forthwith discharged; and he can never again be tried on the same accusation. If, on the other hand, it finds him guilty, the judge pronounces sentence. If the jury cannot agree, there may be a new trial, with a different set of jurors.

Formerly there was no appeal from the verdict of a jury in a criminal trial, although appeal lay to the House of Lords on points of law. An act of 1907, however, set up a Court of Criminal Appeal consisting of not fewer than three judges of the King's (or Queen's) Bench; and a convicted person may now, as a matter of right, appeal to this tribunal on any question of law, and (with the permission of either the trial judge or of the Court of Criminal Appeal itself) on any question of fact, *e.g.*, that the verdict of the jury was not justified by the evidence. If the appellate court thinks that there has been a serious miscarriage of justice, it can modify the sentence, or even quash the conviction altogether. There can be no appeal beyond the Court of Criminal Appeal, except in rare instances to the House of Lords upon a point of law which the Attorney-General certifies to be of public importance. Under no circumstances can the prosecutor appeal.<sup>1</sup>

3. Criminal  
appeals

A word is in order about the House of Lords as a court. That body no longer possesses any right of original jurisdiction, except in cases of treason or felony in which members are involved and in cases relating to the inheritance and tenure of peerages; and appeals from ecclesiastical courts and from courts in India, the dominions (including the Irish Free State), and the colonies are addressed to the crown and handled by the judicial committee of the privy council.<sup>2</sup> Within limits previously indicated, however, both civil and criminal cases may be appealed to the House of Lords from the highest tribunals of England, Wales, and Northern Ireland, and also civil cases from those of Scotland. So far as the formal rules go, one member of the chamber has as much right to participate in judicial business as another. The forms of procedure are those of a legislature, and not of a court, and all actions are entered in the Journal as part of the chamber's proceedings. Custom now

The House of  
Lords as a  
court

<sup>1</sup> Standard accounts of English criminal justice include G. G. Alexander, *The Administration of Justice in Criminal Matters* (Cambridge, 1915), and P. Howard, *Criminal Justice in England* (New York, 1931). The latter is especially valuable for comparison of English and American methods. Of value, too, is R. C. K. Ensor, *Courts and Judges* (Oxford, 1933). American criminal justice is characterized and criticized at length in R. Moley, *Politics and Criminal Prosecution* (New York, 1929), and *The Long Day in Court* (New York, 1929).

<sup>2</sup> This body, although closely related to the judicial system, is not strictly a court and will be dealt with at a later point in connection with imperial organization and relations. See pp. 427-429 below.

nearly a century old, however, though permitting visitors to look on from the galleries as during legislative sittings, decrees that no persons except the Lord Chancellor, the seven life peers known as lords of appeal in ordinary, and such other members as hold, or have held, high judicial office shall participate in any judicial sitting. This group, or any three of them, may sit and pronounce judgments at any time, regardless of whether Parliament is in session;<sup>1</sup> and from such judgments there is no appeal, although, of course, they may be—but rarely are—in effect set aside by later parliamentary legislation on lines different from those followed in the decisions.<sup>2</sup>

Judge-made  
law

From county court and assize court to House of Lords, no English tribunal wields the power of judicial review on lines with which we are familiar in the United States. Orders in council and orders and rules of administrative authorities may indeed be scrutinized to ascertain whether they are *ultra vires*, and no court which finds them so will enforce them. But they are only a species of "subordinate" legislation, which naturally can be valid only in so far as they harmonize with superior law. As for any act of Parliament, it is *ipso facto* law, to be accepted at face value and enforced as long as, and in so far as, not rescinded by later statute. British courts are therefore relieved of a burden of constitutional construction or interpretation which rests heavily upon our higher tribunals in the United States. Of course they cannot escape the task of interpreting the law in the sense of determining what it means. Courts everywhere must do this; and in doing it, British courts, in common with American and French and German courts, declare and in effect

<sup>1</sup> Cases are usually heard by divisions, or panels, of three or five.

<sup>2</sup> A good example of a House of Lords decision subsequently overridden in part by an act of Parliament is the Trade Unions and Trades Disputes Act of 1906 exempting trade unions from legal liabilities to which they were declared subject in the Taff Vale decision of 1901. Another is the Trade Union Act of 1913 legalizing (with certain qualifications) political uses of trade-union funds which the House of Lords, in the Osborne Judgment of 1909, had held improper. See F. A. Ogg and W. R. Sharp, *Economic Development of Modern Europe*, 412-418. It should be observed, of course, that the enactment of such subsequent legislation does not necessarily mean that the House of Lords has decided wrongly under the law existing at the time. It may mean only that a parliamentary majority, finding that the law, when tested in the highest court, has certain consequences, has concluded that the law itself ought to be changed.

On the House of Lords as a court, see M. MacDonagh, *The Pageant of Parliament*, II, 78-86, and W. S. Holdsworth, *History of English Law*, I, 170-193.

make law. What did Parliament intend by a given phrase or clause? How should a pertinent act be applied to a situation which Parliament obviously did not envisage or expect to arise? What—if there is no statutory provision at all upon which to fall back—is the common law relating to the matter? In all such instances it is for the judges to say. Some English, as well as foreign, authorities, shrink from the conclusion that judges actually make law. They prefer to speak of them as only “discovering” it. Dicey truly remarks, however, that while an English judge is primarily an interpreter, and not a maker, of law, he does, by interpretation, make law, and it is immaterial whether we call such law “judge-made” or something else.<sup>1</sup> As was pointed out earlier in the present chapter, the great body of English law originated, and has at all times been expanded and developed, largely at the hands of the judiciary. From one end of the land to the other, judges are still refashioning the fabric just as truly as, even though by somewhat subtler methods than, Parliament itself.

The British system of justice, both civil and criminal, deservedly enjoys an enviable reputation, both at home and abroad, for fairness, sureness, stability, and dignity. Foreign—especially American—lawyers and judges who go to England to observe its workings at close range rarely fail to return home full of admiration for what they have seen. There are other judicial systems, *e.g.*, in France and Germany, which rest upon quite different principles, and for which much may be said. As systems developed by and for peoples with different backgrounds and ideas, they may be fully as defensible as the British. But if other evidence were lacking, the inherent excellence of the British system would be demonstrated by the close study of it, and large borrowings from it, made by peoples in all parts of the world who find it desirable to recast and modernize their inherited legal and judicial institutions.

The explanation is to be found in three main phases or aspects of the system. The first has to do with the broad principles upon which justice is based, the second with the rules of procedure observed in the courts, and the third with the quality of bench and bar. A word may be said about each of these three matters.

Reasons for  
the high  
quality of  
British  
justice:

<sup>1</sup> *Law and Public Opinion in England*, 359, note 2.

1. Fundamental principles followed

Of underlying principles, some relate to the administration of justice generally, others to criminal justice particularly, and still others especially to civil justice. As viewed by an eminent English legal authority,<sup>1</sup> the rules of most general application are substantially as follows: 1. Judicial trials are held in open court to which the public has free access. With the exception of a few opprobrious and short-lived tribunals such as the Elizabethan Court of High Commission, this practice has prevailed from time immemorial. There are many countries, however, in which judicial proceedings are conducted in secret. 2. Both parties to a proceeding have a right to be represented by counsel, and to have their respective sides of the case heard by judge and jury. In some other systems of justice the accused, in criminal cases, is not necessarily entitled to be represented by skilled advisers. 3. The burden of proof rests, in almost every case, civil or criminal, on the accuser. 4. Guilt or innocence is established in accordance with a great body of recognized rules and maxims constituting "the law of evidence." 5. In all serious criminal cases, the accused must be tried, not by a judge alone, but by a jury; and in civil cases involving an accusation against the moral character of either of the parties, that party may, if he desires, demand the verdict of a jury. 6. Judgment is rendered in open court, and, at least in the intermediate and higher courts, the judge or judges give the reasons for it. 7. In effect, if not in name, there is, in substantially all legal proceedings, at least one appeal to a higher tribunal from the decision of a court of first instance on a matter of law, and to a very large extent on matters of fact, so that the accused person, or, in civil cases, either party, has the right to submit his case to the judgment of at least two tribunals, acting independently of each other.

2. Rules of procedure

Not only do the British courts operate under salutary principles such as those enumerated, but they are favorably situated in the matter of rules of procedure. In the United States, the rules which govern pleading, evidence, and all other aspects of court procedure emanate mainly—in many states entirely—from legislative bodies, not from the courts themselves. This means that they are made by men who not only have not had judicial experience, but in many instances are not even lawyers, at all events of large experience and ability. The results are

<sup>1</sup> E. Jenks, *The Book of English Law*, Chap. vii.

often deplorable, and a movement is slowly gaining momentum for a change to court-made rules.<sup>1</sup> In England, procedure was originally governed only by the custom of the individual tribunal, and for centuries changes were made solely by practice or by court-made rules, with Parliament occasionally intervening to create new remedial rights or to cut off old procedural abuses. In the nineteenth century, public disapproval of certain features of existing procedure found expression in a series of reform statutes, culminating in the Judicature Act of 1873 which vested the rule-making power in a rules committee consisting of the Lord Chancellor, seven other important judges, and four practicing lawyers—a decidedly expert body representing, it will be observed, both bench and bar. This arrangement has proved in every respect satisfactory. It is true that all new and revised rules must still be laid before Parliament, which, if it likes, may disallow them. But in point of fact the committee's work has been so well performed that in sixty years no occasion for a parliamentary veto has ever arisen.

The outstanding characteristics of the procedure thus developed are its expeditiousness, its indifference to mere technicalities, its emphasis upon the maintenance of an unobstructed road to substantial justice. The rules repose solidly on the principle that every action should proceed promptly to a decision on its merits, and that the parties ought never to be turned out of court because of some error in practice or procedure which in no way involves the merits of the controversy. "The relation of rules of practice to the work of justice," says a great English judge, "is intended to be that of hand-maid rather than mistress, and the court ought not to be so far bound and tied by rules, which are after all intended only as general rules of procedure, as to be compelled to do what will cause injustice in a particular case." Herein is to be found the reason why less than one-half of one per cent of all cases are decided upon appeal on questions of practice and procedure. In the American states, a great deal of trouble, and a considerable amount of injustice, arises not only from the pettifogging tactics of lawyers, but from rigid and misdirected rules laid down by well-meaning but inexpert legislatures. There have been jurisdictions in which as high as

<sup>1</sup> A leader in this effort is the American Judicature Society, in whose *Journal* will be found much illuminating discussion of the subject.

fifty per cent of the cases reversed on appeal were decided upon questions of practice and procedure which in no way involved the merits of the controversy. In England, the judge is undisputed master of his court-room and, supported by a body of rules designed to clear the path for essential justice, he refuses to permit business to be slowed up or diverted by bickering, quibbles, and technicalities. Foreign observers, accustomed to the bullying of witnesses and the vindictiveness of opposing counsel, are invariably struck by the orderliness, quiet efficiency, and general air of courtesy pervading English trials. It is even contrary to tradition for a prosecutor to exhort the jury to convict; when he has presented the evidence against the defendant, his duty is done.

3. Character  
of bench and  
bar

Needless to say, the superior adaptation of procedure to the ends in view is a main reason why justice is both surer and speedier in Britain than in most other countries. The calendars of the courts do not become clogged; a murder trial will often be carried through all of its stages while an American court would still be laboring over the empanelling of a jury. But there are other favorable circumstances, connected still more directly with the character of bench and bar. British judges are, in general, of a high order of ability, independence, and integrity, and are probably held in higher esteem than the judges of any other country. One reason undoubtedly lies in the fact that the judiciary is entirely appointive; and not only the judges themselves, but court officers such as sheriffs and clerks. Not even the justices of the peace are elected. Nominated in the various counties by the lords lieutenant,<sup>1</sup> the latter are appointed by the Lord Chancellor, in the name of the king; and all members of the judiciary proper—of county courts, of High Court, of Court of Appeal—owe their positions to selection made primarily by the same powerful official. An elective judiciary did not work well in Revolutionary France and was soon given up; and it shows plenty of defects in most of our American states. Neither England nor any part of the British Empire has ever thought it wise to permit judges to be subjected to the political hazards and temptations that almost inevitably go along with an elective system. In France and Germany, judges are regularly appointed from among persons profes-

<sup>1</sup> See p. 390 below.

sionally trained for the bench. In Britain, as in the United States, this is not the case; judges are selected, rather, from among practicing lawyers. Under British usage, however, members of the county courts must be barristers of at least seven years' standing, which in the case of members of the High Court is increased to ten years, and in that of members of the Court of Appeal to fifteen years.

In the second place, the independence which flows from appointment rather than election is enhanced by life tenure,<sup>1</sup> and, further, by a security of position which arises from the fact that, while legally removals can be made by the Lord Chancellor, in practice none take place except on joint address of the two houses of Parliament. Removals are quite as rare as in the national judiciary of the United States, which, unlike the state judiciaries, is appointive as in Britain.

Finally, judicial positions in Britain are made attractive by much higher salaries than are paid in Continental Europe or in the United States. Judges of the county courts, whose jurisdiction includes all of the cases tried by the ordinary justice of the peace in the United States, receive £1,300 a year, which is more than is paid to most justices in the various state supreme courts of this country; while the salaries paid in the Supreme Court of Judicature range from £5,000 for the ordinary justice of the trial and appellate branches to £8,000 for the Lord Chief Justice and £10,000 for the Lord Chancellor—double or triple the salaries of justices of corresponding grade on this side of the Atlantic. Further dignity and distinction are lent by the practice of knight-ing judges upon their appointment. All this helps to secure and to retain brains, character, and energy.

As for the bar, a useful feature is the division of labor arising from the distinction between solicitors, or attorneys, who deal directly with clients and prepare cases, and barristers, who are engaged by the solicitors to conduct the cases for them before the courts. Each type of lawyer becomes expert in his special kind of work, and the results show both in the thoroughness with which cases are worked up and in the skill with which they are handled afterwards. In the United States, it sometimes happens, of course, that certain members of a legal firm devote themselves primarily to work in the office and others mainly to appearance

<sup>1</sup> The legal phrase is *quamdiu se bene gesserint*.



in the court-room. But as a rule a lawyer tries to do both things, often—at all events in cases of a more difficult nature—to his client's disadvantage. The only objection to the English plan is that it tends to increase the expensiveness of obtaining justice in litigation. This matter of cost to the litigant is, indeed, the principal ground on which the English system of justice is at present being subjected to criticism.<sup>1</sup>

<sup>1</sup> The best treatises on the development of the English courts are W. S. Holdsworth, *History of English Law*, I, and A. T. Carter, *History of English Legal Institutions* (4th ed., London, 1910); to which may be added the latter author's briefer *History of the English Courts* (London, 1927), and F. F. Russell, *Outline of Legal History* (New York, 1929), which is virtually a summary of Holdsworth. Useful brief accounts of the courts as they now stand include A. L. Lowell, *op cit.*, II, Chaps. lix-lx; E. Jenks, *The Book of English Law*, Chaps. v-vii; and R. C. K. Ensor, *Courts and Judges* (Oxford, 1933). The works of Alexander and Howard, mentioned on p. 377, note 1, above, are important; and E. A. Parry, *The Law and the Poor* (New York, 1914), and C. Chapman, *The Poor Man's Court of Justice; Twenty-Five Years as a Metropolitan Magistrate* (London, 1926), tell of the workings of the judicial system in first-hand and interesting fashion. The author of the last-mentioned book was for 20 years an English county court judge. Readable and informing also is C. Mullins, *In Quest of Justice* (London, 1931), where one will find a vigorous indictment of the present expensiveness of litigation. For detailed criticism of English law and justice, with proposals for improvement at various points, see a series of articles under the general title of "Essays in Law Reform" in the *Polit. Quar.*, Apr.-June, 1933, and succeeding issues. A Lord Chancellor's Committee on Law Reform submitted reports on the subject in March and December, 1933.

## CHAPTER XIX

### LOCAL GOVERNMENT AND ADMINISTRATION

The national government of a great state such as Britain is a colossal affair. It makes war, conducts foreign relations, and, speaking generally, does things of a sort and on a scale to challenge the attention and sometimes stagger the imagination. It gets the headlines in the newspapers and appeals with greatest power to public pride and patriotism. Even if they do not always realize it, the general run of citizens have, however, quite as much at stake in the government of counties, towns, and other local divisions in which they dwell. After all, it is the authorities of areas such as these that spend most of the taxpayer's money and shoulder the main responsibility for protecting his life and property, safeguarding his health, and providing schools, roads, and other necessities of his everyday existence. It is in such areas, too, that people acquire the electoral, legislative, administrative, and financial experience requisite to enable them to create, support, and carry on governments of national and continental proportions. Local government, as a matter of fact, is not a thing apart, but rather part and parcel of the integrated political structure and processes of any well-ordered state. Even in countries where local authorities have most independence, national and local institutions are inextricably interlocked and can be understood only as viewed in relation to one another.

General significance

Three main facts catch the eye of even the most casual observer of local government in present-day Britain. The first is that, as would be expected, the system is in its fundamentals rooted deeply in the past. From the days of semi-independent Saxon towns and shires, community feeling has always been strong among Englishmen, who have guarded no right more jealously than that of managing their local affairs in their own way. There is much in the spirit, and something in the machinery, of English local government today to remind one of the times of Alfred and the Confessor. A second fact is that local government has, nevertheless, been progressively adapted to shifting condi-

Three fundamental features

tions from century to century, and indeed has undergone important changes in very recent years. Historic counties and boroughs survive, but with altered organization and functions; older units like the parish have become atrophied; new jurisdictions have been laid out, new elective bodies called into being, new administrative offices created. In the third place, while local areas cling as best they can to their heritage of free civic life, their machinery and powers are regulated increasingly from London, on generally uniform lines for England and Wales, though with allowance for historic variations in other parts of the realm. Local institutions still stand more truly on their own feet, and are more democratic, than in France, Italy, and other Continental countries. But for seventy-five years the trend has been toward more control by Parliament and Whitehall; and, except for special arrangements in metropolitan London, a single pattern prevails almost as uniformly in England and Wales as in France, and far more uniformly than in the United States, where the national government, although nowadays establishing closer connections, still has relatively little to do with local affairs, and where wide differences of organization and function are found from state to state.

Local government a hundred years ago

At the dawn of the nineteenth century, local government in the rural sections of the country was carried on principally in counties (historically continuous in many instances with Anglo-Saxon shires) and in subdivisions known as parishes which, starting as areas for purely ecclesiastical purposes, had taken on civil functions as well, and in doing so had, in effect, replaced the ancient townships. Urban government was similarly carried on in boroughs, which, dating also in many cases from Anglo-Saxon times, had gradually gained autonomy as chartered municipalities. Of counties, there were 52, each with (1) a sheriff, appointed by and serving the interests of the central government, (2) a lord lieutenant, similarly appointed and having charge mainly of military matters, (3) coroners, whose principal function was the investigation of sudden deaths, and, most important by far, (4) varying numbers of justices of the peace, likewise named by the central government, and now joining to their original functions of petty justice large responsibilities as local administrators (*e.g.*, of highways) and as makers of local ordinances in the interest of law and order. Selected chiefly from among the lesser

landholders and the rural clergy, the justices naturally had the point of view of the gentry rather than of the humbler folk of the county; and since there was no provision for a council or other elected body, county government could by no stretch of imagination be termed democratic, even though the parish had a "parish meeting" which in the simplest matters of neighborhood government functioned a good deal like the New England town meeting of that day and since. Having received their charters one by one through a long stretch of centuries, the more than 200 boroughs had by no means the same rights and powers, and were far from enjoying full exemption from the jurisdiction of counties and parishes in which they lay. Speaking broadly, however, they were self-governing areas, with authority lodged in the hands of a "corporation" consisting of the burgesses, or freemen, to whom the charter had been granted. In most cases, the freemen were originally rather numerous. But by one means or another the lists were gradually narrowed, and in the period of which we are speaking only a handful of the inhabitants were as a rule included. Such as they were, the freemen chose the mayor, aldermen, and councillors by whom the affairs of the borough were managed.<sup>1</sup>

The arrangements described were reasonably in keeping with political thought and habits in the eighteenth century. In the nineteenth, they failed to satisfy, and before its close they gave way to the very different system prevailing today. The first point of attack was the borough, not because borough government had been demonstrably worse than county government, but because new conditions flowing from the Industrial Revolution made the borough a peculiarly insistent problem. With population shifting unprecedentedly from country to town, new urban centers rising all over the industrialized midlands and north, and municipalities everywhere clamoring for powers and machinery with which to meet the new needs for police protection, sanitation, water supply, public lighting, and housing control, the time-honored devices of borough government simply

Reform of  
borough gov-  
ernment

<sup>1</sup> The classic treatise on English local government prior to the reforms of the nineteenth century is S. and B. Webb, *English Local Government from the Revolution [of 1688] to the Municipal Corporations Act*, 6 vols. (London, 1906-22), of which a volume bearing the subtitle, *The Parish and the County* (London, 1906), Bk. ii, Chaps. i-vi, and another entitled *The Manor and the Borough* (Pts. i and ii bound separately, London, 1908) are specially pertinent.

had to be reconstructed or replaced. For a time, Parliament met the situation piecemeal by measures improvising special arrangements for particular municipalities. But after the reform of the House of Commons in 1832, it advanced to a more adequate solution, which, following an exhaustive investigation by a royal commission, took form in the Municipal Corporations Act of 1835.<sup>1</sup> Applying at the outset to 178 boroughs, this memorable measure introduced a uniform pattern of municipal government under which the powers and functions of boroughs were guaranteed and at some points extended; the "corporation" was defined as "the legal personification of the local community"; and a unified, fairly democratic, organ of government was provided for in the form of a unicameral council elected by the taxpayers.<sup>2</sup>

Reform of  
rural local  
government

The act of 1835 was memorable not only because it fixed the basis and form of municipal government from that day to this, but because in time all local government, rural as well as urban, was reorganized on the lines that it laid down. The reform of rural government was, however, long delayed. London's government was reconstructed in 1855, and additional legislation for municipalities led to a Municipal Corporations Consolidation Act in 1882 before anything worth while was done for the counties. Indeed, conditions outside of the boroughs steadily grew worse, as county oligarchies fell into sharper contrast with parliamentary and municipal democracy, and as new local administrative units—"improvement act" districts, school-board districts, highway districts, conservancy districts, and what not—were piled on one another in an ever more confusing and wasteful jungle of jurisdictions. Perhaps the situation had to grow worse before it could grow better. At all events, it became so bad that Parliament was at last driven to act; and two great statutes—the Local Government Act of 1888 and the District and Parish Councils Act of 1894—brought reasonable order out of chaos.

<sup>1</sup> The commission's report was published in 1835 in five volumes, the first containing the report proper, the other four the evidence on which it was based. In 1837, a separate report was submitted, dealing with the government of London, though Parliament did not get round to a reorganization of the government of the metropolis until 1855. For selected portions of the report of 1835, see T. H. Reed and P. Webbink, *Documents Illustrative of American Municipal Government* (New York, 1926), 3-29.

<sup>2</sup> W. B. Munro, *The Government of European Cities* (rev. ed., New York, 1927). Chap. i.

This they did, not only by introducing democracy as in the boroughs, but by correlating the work of local government (outside of the boroughs) in a new set of administrative counties and in reorganized districts, rural and urban, and by "municipalizing" all of these areas, *i.e.*, providing them with the same type of council government as that given the boroughs in 1835. Since the dates mentioned, the general tendency has been to do away with minor local authorities charged with administration of particular services and to consolidate responsibility for such administration in the elective councils of the larger areas; and impetus has been supplied not only by the desire to eliminate overlapping and waste, but especially by the purpose to relieve small areas which have found themselves financially overburdened by spreading local rating operations more equitably over larger districts. Good illustrations of this tendency are supplied by the Education Act of 1902, which abolished the school-board districts created in 1870 and transferred their functions to the counties and boroughs, and the Local Government Act of 1929, which, among other things, did the same for the unions of parishes that long had administered poor relief.<sup>1</sup>

The upshot is a system of local government not quite so simple and symmetrical as that of France or Italy, but more so than found in many of our American states, where, unhappily, a bewildering multiplication of local jurisdictions is still going on.<sup>2</sup> The five principal surviving areas are the administrative county, the borough, the urban district, the rural district, and the parish. The country is first of all divided into the 62 administrative counties created in 1888. In turn, these counties are divided into less populous rural districts and more populous urban ones. These districts are further subdivided into rural and urban parishes. Scattered throughout are the chartered boroughs, 83 of the largest being known as "county boroughs" because of having been endowed with practically all of the powers of an administrative county. Finally, London, like Paris, Washington, and other national capitals, has a system of its own. One hears of cities; but the term has no governmental significance.

Local government areas today

<sup>1</sup> A readable and illuminating review of the whole course of local government development in Britain from the early eighteenth century to the date of publication is S. and B. Webb, *English Local Government; Statutory Authorities for Special Purposes* (London, 1922), Chaps. v-vi.

<sup>2</sup> F. A. Ogg and P. O. Ray, *Introduction to American Government* (4th ed.), 986-990.

The historic  
county

Instead of abolishing the counties that had come down through the centuries or, on the other hand, making them the basis of a new county government system, the architects of the reform of 1888 allowed them to stand and merely superimposed on them a new set of "administrative" counties, in which the real work of local government and administration was chiefly to be carried on. There are therefore today 52 historic counties and 63 administrative counties--in many instances coinciding geographically, although in some cases a large historic county, *e.g.*, Northampton and Yorkshire, is divided into two or three of the administrative units.<sup>1</sup> In the historic county, one still finds the sheriff, the lord lieutenant, and the justices of the peace--all appointed by the crown, but all considerably diminished in power and importance as compared with earlier days.<sup>2</sup> There is no council or other elective body. Indeed, the purposes served by the historic county are not so much those of the local area, considered apart, as those of the national government, *e.g.*, as a judicial unit and as the territory within which all county constituencies for parliamentary elections are laid out.

The administrative  
county:

The administrative county is a different matter. Like the borough, but unlike the historic county, it is an incorporated area, endowed with a legal personality and accordingly with power to own and dispose of property, to sue and also to be sued. Furthermore, it has a full-orbed governmental system, which the historic county does not--a system patterned as closely upon that of the reformed boroughs since 1835 as differences of physical and populational conditions will permit. This means that its governing authority is an elected council consisting of a chairman, aldermen, and councillors sitting as one body, and charged not only with levying "rates" and making by-laws (subject in most cases to sanction by the appropriate executive department at Whitehall), but with carrying on the multifold work of administration through a clerk, a treasurer, a surveyor, and other appropriate "permanent" officials appointed by the council and answerable to it. Contrary to the American student's natural supposition, both county and borough councils,

<sup>1</sup> Lists of counties of both types will be found in *Whitaker's Almanac* (1934), 666.

<sup>2</sup> As explained in the previous chapter, the justices still carry on the work of "low," or petty, justice. Nearly all of their earlier administrative duties, however, were transferred elsewhere in 1888.

while having some legislative powers, are mainly administrative.

County councillors are chosen, in single-member districts, for terms of three years. The requirements for voting are the same as in borough elections; and since 1928 they have been, as in the case of the parliamentary suffrage, identical for men and women. On the other hand, they are not, and at no time have been, the same as those applying in parliamentary elections. Any person (man or woman) is entitled to be registered as a local government elector if (a) 21 years of age, (b) not subject to any legal incapacity, and (c) an occupier as owner or tenant, for three months prior to June 1 in any year, of any land or premises in the local government area— or if the wife or husband of a person so qualified and residing with him (or her) on the land or premises. Property, it will be observed, still enters prominently into the qualifications, and on that account many persons can vote in parliamentary elections who cannot take part in choosing councillors in their county or borough. On the other hand, in local elections plural voting is not permitted. Candidates are nominated substantially as are candidates for seats in the House of Commons, *i.e.*, in writing, by two registered local government electors of the electoral division for which they stand, eight other such electors “assenting.”

The number of councillors varies with the population of the county;<sup>1</sup> but whatever it is in any given case, a newly elected council proceeds to choose, in addition, a group of aldermen who will sit, not as a separate chamber, but in a single body along with the popularly chosen councillors. These aldermen may be selected from among the members of the council (in which case by-elections are necessary to fill the vacated positions) or from the outside; and they must be one-third as numerous as the ordinary councillors. The alderman’s term being six years instead of three, half carry over and half are freshly elected whenever a new council begins work. Except that he is elected differently, has a longer term, and on the average enjoys a little more prestige, an alderman differs in no respect from an ordinary councillor. The arrangement, however, ensures a greater proportion of experienced members, and in addition opens up a way for

1. The council:

a. Election of councillors

b. Choice of aldermen and chairman

<sup>1</sup> The counties are of very unequal size and population. Aside from London, the most populous is Lancashire, with 1,794,857 people; the least populous, Rutland, with 17,397. Eight have a population of less than 100,000.



good men failing of, or not seeking, popular election to be brought in. Councillors and aldermen together choose a county chairman, from their own number or from outside; and the whole group, numbering as a rule 75 or more persons, functions unitedly as "the council." Ordinary councillors and aldermen alike are drawn mainly from the landowners, large farmers, and professional men, and are commonly elected with little reference to party connections. In some of the more populous counties, however, Labor has actively, and sometimes successfully, sought control, resulting in the infusion of a good many members from the lower middle and working classes. Since 1907, women have been eligible, and many have been elected.

c. The council's powers and duties

The act which created the administrative county made the council responsible for many things, and the list has since been lengthened considerably. From the first, it decided questions of policy and made by-laws for the county; supervised the work of the rural district councils; appropriated money; borrowed money (with approval by the Local Government Board or other central authority); levied county "rates," or taxes, on property;<sup>1</sup> maintained county buildings; provided asylums and reformatories; protected streams from pollution; granted licenses (except liquor licenses, which are still granted by the justices of the peace); and appointed administrative officials. Abolishing the school-boards set up in 1870, the Education Act of 1902 made the council responsible also for elementary and secondary education throughout the county, except in the urban portions; and the Local Government Act of 1929 transferred to it the burden of poor-law administration (again outside of the boroughs) previously borne by the guardians of the poor-law unions, together with a far greater amount of control over highways, and even town-planning. As smaller government areas prove less and less suited to new social and economic conditions, counties and boroughs, as already indicated, are called upon to carry steadily increasing loads. There are, indeed, those who believe that, with a view to spreading burdens more equitably, even larger local areas will eventually have to be created.

<sup>1</sup> Designed to raise whatever amounts were required beyond those realized from tolls, fees, rents, and—most important of all—subventions from the national treasury for education, police, health, maternity and child welfare, etc., under the grant-in-aid system.

The council is too large a body to be brought together very frequently, and in point of fact it rarely meets more than the four times a year required by law. Needless to say, most of the work devolving upon it is, and in the nature of things must be, done either by its committees or by the staff of permanent county officials. How far national control in county affairs extends, not only as to functions, but also as to machinery, is indicated by the fact that every council is required by statute to have no fewer than nine stipulated committees, *e.g.*, on finance, education, public assistance, *i.e.*, poor relief (required by the act of 1929), public health, housing, agriculture, and maternity and child welfare. Beyond this, each council may maintain such other committees as it likes; and there is usually one on highways and bridges, one on weights and measures, and also an executive committee. Finally, there are certain joint committees in which the council shares, notably one on county police, composed, in equal numbers, of county councillors and justices of the peace. Despite a tendency in all local government committee organization toward selection of a certain proportion of a committee's members by the committee itself, county council committees are still chosen mainly by the council as a whole, a "slate" having previously been prepared by a committee of selection, on the analogy of the practice prevailing in the House of Commons at London. Most council committees, in county and borough alike, have subcommittees, and the demands of committee work upon the members are increasingly heavy.

d. How the council works

The day-to-day administrative business of the county is carried on neither by the council nor by its committees, but rather by, or at all events under the immediate direction of, a group of salaried permanent officials, including chiefly a clerk, a treasurer, a surveyor (in charge of highway construction and repair), a director of education, a land agent, an inspector of weights and measures, and a health officer. In the United States, most or all of these would be elected by the people, for fixed, and usually short, terms; they would be chosen primarily as Republicans or Democrats; and if they hoped to hold their jobs they would have to divide their time and energy between their administrative duties on the one hand and political activities calculated to win reelection on the other. In Britain, where "short ballot" principles prevail in local as well as in national

2. The permanent officials

government, they are selected by the council—not, indeed, under formal civil service rules, but yet essentially with reference to their personal and professional fitness for the work to be done; and although legally removable by the council at any time,<sup>1</sup> few are ever dismissed on partisan grounds and retention is virtually guaranteed as long as good service is rendered. In many parts of the United States, county government—although now showing signs of improvement—has traditionally been poorly organized, inefficient, and wasteful. In Britain, it is carefully integrated, economical, and as a rule progressive. One explanation is the high level of competence and public-mindedness usually found in the council. But an even weightier one is the capacity, experience, security, and morale of members of the permanent staff.<sup>2</sup>

Districts and  
parishes

A map of any administrative county would show a variety of subdivisions, each with governmental authorities and powers of its own. Here and there would be found a borough, including perhaps a "county borough" or two. There would be found also rural districts and urban districts, and within these the smallest units of all, the parishes. Of rural districts, there are, in England and Wales, 643 in all, each with an elective council and a clerk, treasurer, and other permanent officials, and with power to levy rates and carry on administrative work subject to general control by the county council. Urban districts—778 in number—are much the same, except that they have somewhat greater authority over sanitation, housing, licensing, and other activities especially appropriate to thickly settled communities. As rural districts grow in population, they may be converted into urban districts; similarly, urban districts may become boroughs. There is, however, no fixed rule of progression; notwithstanding a general tendency to urbanization, both in populational conditions and in governmental organization, there are plenty of urban districts, and even rural ones, which loom

<sup>1</sup> By exception, a full-time health officer can be removed only with the consent of the Ministry of Health; and one or two other restrictions apply in certain circumstances.

<sup>2</sup> For a very direct and simple explanation of English county government, see J. P. R. Maud, *Local Government in Modern England* (London, 1932), Chap. iii. Cf. J. Redlich and F. W. Hirst, *Local Government in England*, II, Pt. II, Chaps. ii-v. The principal books on county government in our own country are J. A. Fairlie and C. M. Kneier, *County Government and Administration* (New York, 1930), and A. W. Bromage, *American County Government* (New York, 1933).

larger in the census returns than do certain of the boroughs. As for the parishes, it is necessary to say only that those found in rural districts still have minor civil as well as ecclesiastical functions, exercised in most instances (7,100) through a council, but in many others (5,600) through a primary assembly, or "parish meeting" only,<sup>1</sup> while those in urban districts have since 1894 had ecclesiastical functions only. As a unit of civil government, the parish—as indeed the rural district also—is distinctly on the decline.

Nowadays, nearly four-fifths of the people of England and Wales live in towns, and therefore under borough government. A borough is simply an urban area that has received a charter. One hears of different kinds of boroughs—"parliamentary," "municipal," "county." But so-called parliamentary boroughs are merely units or areas for the election of members of the House of Commons;<sup>2</sup> and municipal and county boroughs differ, not in structure and general methods of government, but only in the fact that whereas the former is governmentally, as well as geographically, a part of the administrative county in which it lies, the latter has been given most or all of the powers of a county, and hence is practically exempt from county jurisdiction. The device of the county borough has been criticized on the ground that it cripples the county by restricting its jurisdiction and depleting its rateable values; but to anyone familiar with the overlapping, friction, and waste arising in the United States from the relations of larger cities and the counties in which they lie,<sup>3</sup> the arrangement will seem to have considerable merit. As soon as any borough attains a population of 75,000, it may ask the Ministry of Health for a provisional order giving it county borough status. Not all choose to do this. Nevertheless, since

The borough.

<sup>1</sup> By council in all instances where the population exceeds 300; in other cases optionally, with permission of the county council required if the population is under 100. The parish meeting is Britain's only example of direct, as distinguished from representative, government.

<sup>2</sup> Geographically, they usually (but not always) coincide with municipal boroughs. Very small municipal boroughs do not figure separately as parliamentary constituencies, while large ones are divided into two or more such.

<sup>3</sup> E.g., in the case of Chicago and Cook county, Illinois; Detroit and Wayne county, Michigan; New York City and the five counties over which it extends. On the other hand, consolidations of authority in the case of Boston and Suffolk county and of San Francisco and San Mateo county look in the direction of something resembling the English county borough system. Cf. P. Studenski, *The Government of Metropolitan Areas* (New York, 1930).

1888 the number of county boroughs has risen from 61 to 83, with an aggregate population of some 13,000,000.

1. Obtaining  
a charter

How does an urbanized area become a borough in the first place? The answer is, of course: by securing a charter creating a municipal corporation and bringing the place, as to form and powers of government, under the provisions of the Municipal Corporations Consolidation Act of 1882 and its amendments. No standard of population, or of rateable valuation, exists, and the people of any area can petition for a charter whenever they like. Furthermore, smallness of numbers does not seem to prejudice a case; more than a fourth of the existing 256 ordinary municipal boroughs have fewer than 5,000 people, being appreciably exceeded in population by half or more of the urban districts, and giving point to the remark of an English writer that it is almost as difficult to discover why a place becomes a borough as to find out why a commoner becomes a peer. At all events, the petition, signed by a goodly number of householders, and addressed to the king, goes to a committee of the privy council, which institutes an inquiry, and upon finding favorably, tentatively publishes the charter in the *London Gazette*. If at the end of a month no protest has been lodged, either by a local authority or by one-twentieth of the owners or ratepayers of the area affected, an order in council is issued definitely granting the charter and fixing the boundaries of the new borough. If, however, protest is forthcoming, the grant can be made only in pursuance of an act of Parliament.<sup>1</sup>

2. The sys-  
tem of gov-  
ernment:

a. Compari-  
son with the  
county

True to the English plan of concentrating authority in a single elective body, all borough powers are gathered in the hands of a council; and so similar is this council and the machinery through which it manages affairs to that of the county, already described, that little is necessary here except to point out certain significant differences. To begin with, while the council consists of ordinary councillors, aldermen, and a chairman (known in the borough as mayor), sitting as one body, and chosen on the same general lines and under the same suffrage arrangements as in the county, the councillors are, in larger municipalities, elected in districts, or wards, each as a rule returning three, though in some instances six, or even nine, members; and in

<sup>1</sup> On charters and charter-making, see W. B. Munro, *The Government of European Cities* (rev. ed.), Chap. ii.

smaller ones, more frequently on a general ticket for the borough as a whole.<sup>1</sup> As in the county, the term is three years; but instead of the entire council being elected at one time, one-third of the members go out of office each year,<sup>2</sup> resulting in a borough election every 12 months—either the borough as a whole choosing one-third of the entire council or the various wards choosing one, two, or three of their respective quotas. In the next place, whereas county elections—like all local elections twenty or thirty years ago—are in the main non-partisan, Labor's effort to capture control of borough councils has not only been successful in many cases, but has turned most borough elections into sharp party contests. National issues which have little bearing on municipal affairs are dragged into the electoral discussions. There is, however, some compensation in the fact that elections have grown decidedly livelier, with a better turn-out at the polls than in the counties. In the third place, the mayor—elected for one year by the council, usually from its own number, but occasionally from outside—is, in larger cities at all events, a more conspicuous personage than the county chairman. This does not mean, however, that he occupies any such position as an American mayor under the still prevalent mayor-council form of municipal government; his place is far more like that of the American mayor under the commission plan. He presides over council meetings, votes as other members, and represents the borough on ceremonial occasions. But he is in no sense the head of a separate branch of government; he has no power of appointment or removal, no control over the permanent officials or their departments, no veto power. The post is one of honor, and an incumbent usually seeks re-election. But it offers no scope for executive and administrative abilities; and as matters go, it is chiefly important that a mayor be a person of means and leisure. Demands of a social and philanthropic nature are heavy, and no salary is provided.<sup>3</sup>

The council constitutes, in the fullest sense, the government of the borough. Hence it exercises substantially all of the powers (save that of electing the councillors themselves) that come to

b. Powers of  
the council

<sup>1</sup> The number of members, varying according to population, runs as high as 141 in Manchester and 153 in Liverpool.

<sup>2</sup> One-third of the aldermen (having six-year terms) every two years.

<sup>3</sup> There are beginning, however, to be Labor mayors who are only wage-earners.

the borough from the common law, from general and special acts of Parliament, and from provisional orders. These powers fall into three main classes: legislative, financial, and administrative. The council makes by-laws, or ordinances, relating to all sorts of matters—streets, police, health, traffic control, etc.—subject only to the power of the Ministry of Health to disallow ordinances on health and a few other subjects if that authority finds them contrary to superior law or otherwise objectionable. It acts as custodian of the “borough fund” (consisting of receipts from public property, franchises, fines, fees, etc.); levies “borough rates” of so many shillings or pence per pound on the rental value of real property, in order to obtain whatever additional revenue is needed; draws up and adopts the annual budget; makes all appropriations; and borrows money on the credit of the municipality, in so far as the Treasury authorities at London permit. Finally, it exercises control over all branches of strictly municipal administration. This it does, first, by appointing the staff of permanent salaried officers—clerk, treasurer, engineer, public analyst, chief constable, medical officer, and others—who, with their respective staffs, carry on the daily work of the borough government, and, second, by continuous supervision of these same officials and their subordinates, exercised through committees which it maintains on the various branches of municipal business.

c. The council's committees

The council itself meets in the town hall monthly, fortnightly, or weekly, as business requires. Much of its work, however, is performed through the committees mentioned. As in the counties, several committees, *e.g.*, on finance, education, poor relief, and old age pensions, and a “watch” committee having to do with police, fire protection, and certain kinds of licensing, are required by national law. Beyond these, the council creates others as it needs them, the total sometimes running as high as 25 or 30. Practically all matters brought up in council meeting are referred to some committee; and since they are usually considered in a good deal of detail, and by the councillors best informed on the subject, there is a strong tendency for committee findings and recommendations to be received favorably by the council and made the basis of its actions.

The day-to-day work of administration is carried on by the “municipal service,” consisting of (1) a relatively small number

of expert, professional heads of departments, and (2) an adequate staff of subordinate officials and employees. As in the counties, officials of the higher grades are chosen solely by the council; none are elected by the people, and none are appointed by the mayor.<sup>1</sup> Candidates are not subjected to formal examination, but are sifted very much as are applicants for responsible positions in the employ of private business establishments. When, for example, a new borough treasurer is required, the finance committee looks over the field, receives applications, inquires into qualifications, and at length makes a recommendation to the council, which can usually be depended upon to ratify the committee's choice. It will not do to say that personal and partisan considerations never enter in; as between two candidates equally qualified but of different political faiths, the choice is likely to fall upon the one whose political views coincide with those of the council majority. Persons winning appointment are usually, however, well qualified both personally and professionally, and it is a very common thing for a borough to call into its service a surveyor or a medical officer who has had a successful career elsewhere. Once appointed, an official, although legally removable by the council at any time, can depend on being continued in his post as long as his work proves satisfactory; unlike American municipal administrators, he is not under temptation to play politics in order to win reelection. Security of tenure, together with an open road to preferment through calls to other boroughs, makes for accumulation of experience, growth in capacity, and a general professionalizing of the upper levels of the municipal service with which we have nothing to compare in the United States except the somewhat slow and hazardous growth of the city managership.<sup>2</sup> Large advantage arises, too, from attendance of higher officials at meetings of council committees for purposes of information, discussion, and advice. A main reason, indeed, why committee recommendations carry so much weight as to be almost certain of adoption by the council is the knowledge of that body that such proposals have been arrived at, not by mere deliberation

d. The  
"municipal  
service"

<sup>1</sup> Except that one of three borough auditors is appointed by the mayor from among the members of the council and the other two are elected by the voters of the borough from among persons who are qualified to be, but are not, members.

<sup>2</sup> L. D. White, *The City Manager* (Chicago, 1927).



of the committee as a group of laymen, but by full and free discussion of the problems involved, participated in by the persons best qualified to help reach wise decisions. As a rule, no such coöperation exists between council committees and heads of departments in American cities, at all events in those of the mayor-council type.

Still room for  
improvement

Subordinate members of the municipal service are appointed by the head of the department concerned; and here the situation is less satisfactory. Except in a few cases in which the council has laid down minimum qualifications, there is no uniformity of method and no guarantee that tests of any adequate nature will be applied. "Perhaps less than ten per cent of the local administrative and clerical officials," says a leading English student of the subject, "are recruited by reference to some public and objective test of quality; and in the main, with the exception of a few enlightened municipalities, e.g., London, the only attention paid to recruitment is of a negative sort, to avoid flagrant and scandalous inefficiency."<sup>1</sup> Notwithstanding the room left for patronage, as practiced by the chiefs of departments and by meddling councillors, the service is on the whole considerably freer from the devastating effects of partisan and personal favoritism than the municipal services of the United States and most other countries. "No one who has thought about the matter," says a leading English authority, however, "can believe that the municipal service can for long continue on its present lines."<sup>2</sup>

The govern-  
ment of Lon-  
don

Most of the world's great capitals—Paris, Berlin, Rome, Tokyo, Washington—have governments quite unlike those of other municipalities of the country in which they are situated. This is true of London as well. At the heart of this greatest of all urban centers<sup>3</sup> stands a curious historic survival, the "city"

<sup>1</sup> H. Finer, in *Public Administration*, VI, 295 (1928).

<sup>2</sup> W. A. Robson, *The Development of Local Government*, 14. The literature on English borough government is voluminous. There is no better treatment of the subject generally than W. B. Munro, *The Government of European Cities* (rev. ed.), Chaps. ii–viii. But see also J. P. R. Maud, *Local Government in Modern England, passim*; W. A. Robson, *op. cit.*, especially Pt. iii on the municipal civil service, J. Redlich and F. W. Hirst, *Local Government in England*, I, Bk. ii, Chaps. i x, and E. S. Griffith, *The Modern Development of City Government in the United Kingdom and the United States*, 2 vols. (London, 1927).

<sup>3</sup> The population of the metropolitan police district is now more than seven millions, which means that one Englishman in every six is a Londoner.

—once a separate municipality, and still (in spite of the fact that it is primarily a business and financial district, with hardly 14,000 actual residents) clinging resolutely to its identity as a governmental and administrative unit. With a corporation consisting of “freemen and liverymen,”<sup>1</sup> and a government composed of (1) a lord mayor, (2) a “court of common hall,” or elective primary assembly, (3) a “court of common council,” (4) a “court of aldermen” (sitting apart from the council), (5) a group of council committees, and (6) a staff of permanent administrative officials, the city is an interesting but in these days relatively unimportant splotch of pre-reform municipal organization on a map of modernized local areas. In 1888, all extra-city London, previously a labyrinth of separate jurisdictions, was drawn together in an administrative county of London, with an elected council enjoying large powers. And in 1899, a Government of London Act further simplified the situation by sweeping away a mass of surviving parish and district jurisdictions and authorities and creating within the county 28 metropolitan boroughs, each with mayor, aldermen, and councillors, such as any provincial borough possesses, although with powers somewhat differently defined and in certain directions, e.g., finance, considerably less extensive. Superimposed upon this structure is the jurisdiction of a metropolitan water board (created in 1902) and of a police establishment administered directly by the Home Office through a police commissioner—the control of the latter extending, indeed, over all parishes within 15 miles of Charing Cross, or an area of almost 700 square miles. The main distinguishing features of the situation are, therefore, (1) an administrative county which is entirely urban, and therefore physically analogous to a county borough, (2) 28 subdivisions of this county which have ordinary borough governments, but with powers curtailed in proportion to the unusual authority assigned the government of the county, and (3) one special area at the center with a style of government coming down from remoter centuries. Among English local authorities, few are more vigorous, progressive, and imposing than the London County Council.<sup>2</sup>

<sup>1</sup> The liverymen are members of some 75 “companies,” descended from mediaeval guilds, and are so called because of being entitled to wear the “livery,” or dress, of the respective organizations.

<sup>2</sup> The best brief description of London’s government is W. B. Munro, *The Gov-*

Central control over local government

A hundred years ago, counties and boroughs knew but little regulation or control from London. There was a certain amount of national legislation to be enforced. But, speaking broadly, the local jurisdictions taxed, spent, borrowed, built roads and streets, and otherwise took care of their affairs as they pleased. No longer is this true. Heeding the demands of reformers, Parliament passed laws creating new areas, abolishing old ones, prescribing forms of government, conferring powers and imposing duties. Changing social conditions and broadening conceptions of the functions of government caused one new activity after another to be taken up, inviting control on uniform lines. Equally important, Parliament started the practice of granting money to local authorities in aid of education (first in order of time in this field), police, and other services—from which it was but a step to a claim by the national government of a right to inspect the administration of such services in order to find out whether the money was being spent to the best advantage, and from this but another step to assertion of a right to fix standards and assist in seeing that they were maintained.<sup>1</sup> The upshot is that, mainly through the medium of finance, all local government has been drawn into unprecedentedly intimate relations with the national government—into an integrated system in which county, borough, and district, although still by no means mere subdepartments of Whitehall, nevertheless find themselves supervised and controlled from that source at every turn. Centralization has been carried by no means as far as in France, Italy, and other Continental countries; no agent of the central government wields power locally in any such fashion as the French prefect,<sup>2</sup> and at some points, *e.g.*, in the matter of fire protection, there is no central control at all. But of the “home rule” boasted

*ernment of European Cities* (rev. ed.), Chap. ix. Cf. P. A. Harris, *London and Its Government* (London, 1913), and A. Webb, *London of the Future* (London, 1921). The findings of a royal commission of ten years ago on the government of the metropolis are presented in *Report of the Commissioners Appointed to Inquire into the Local Government of Greater London* (London, 1923). The principal problems relating to the matter today are those of (a) redistributing powers and functions between the county and boroughs, and (b) extending the system over densely populated adjoining areas not at present included in the county.

<sup>1</sup> Something like one-fifth of all local expenditure is now met from national grants-in-aid, including (in a recent year) 52 per cent of the total cost of education, 50 per cent of that of police services, 29 per cent of that of highways and bridges, and 38 per cent of that of maternity and child welfare work.

<sup>2</sup> See pp. 624-627 below.

by many American municipalities, Englishmen of today know nothing.<sup>1</sup>

In France, the principle of strong central control was adopted deliberately and is carried out with scrupulous fidelity to a unified, symmetrical, and logical plan. All of the threads are gathered tightly in a single executive department at Paris, the Ministry of the Interior, functioning locally in each of the departments through the prefect. In England, the situation is different. Centralization has come about gradually and slowly, in deference to no theory and according to no fixed plan. Running counter to strong traditions of local independence, it has been accepted grudgingly, and even now is a frequent theme of lament and criticism. Under these conditions, there is naturally little system or logic about it; in response to what seemed palpable needs, the national government has pushed a controlling arm now in one direction and now in another, without ever correlating such activities under a single department or striving for more than a general sort of consistency in them. The central authorities that have to do with local affairs, in one way or another, are therefore many. First of all, there is Parliament, which enacts laws prescribing what areas there shall be, what kinds of government they shall have, what activities they shall or shall not undertake—even what committees their councils shall maintain. Parliament likewise authorizes grants-in-aid and finds the necessary funds. In the second place, the privy council (more properly, the king-in-council) grants charters of incorporation, fixes dates for the taking effect of new statutes, and transfers functions and powers from one agency to another. Finally, many of the executive departments at London share extensively in supervision and control of local affairs. Most important by far is the Ministry of Health, which deals with vaccination, sanitation, water supply, and poor relief, audits local accounts,<sup>2</sup> and handles most applications from local units for permission to borrow money. But the Home Office administers the police system of metropolitan London, and elsewhere fixes police standards and decides whether

Agencies of  
central control

<sup>1</sup> Between 1880 and 1910, there was somewhat of a tendency toward decentralization. In the last 20 years, however, this has been reversed. The Local Government Act of 1929 not only reduced the number of local authorities, but gave Whitehall a stronger hold than ever upon local expenditures.

<sup>2</sup> Except those of boroughs outside of expenditures on education and housing. Aside from these two domains, the borough does its own auditing.

they have been so complied with as to entitle the county or borough to receive half of the cost out of national funds. The Board of Education oversees the local management of all elementary, secondary, technical, and collegiate schools supported in whole or in part by national subsidy. The Ministry of Agriculture and Fisheries directs the enforcement of laws relating to markets, food and drugs, diseases of animals, and numerous other matters. The Ministry of Transport has supervisory jurisdiction over roads, tramways, ferries, harbors and docks, and (through an auxiliary board of electricity commissioners) over electric lighting. The Treasury not only sanctions every grant of national funds in aid of local education, police, health, and highway activities, but, through its public works loan board approves every advance of money to local authorities for housing improvements and other public works. Even this does not exhaust a list which, if pursued to the end, would be found to include fully a score of the nation's leading departments and boards.<sup>1</sup>

Forms of  
control

Except for direct management of the London police by the Home Office, the central departments do not themselves undertake the actual performance of administrative work falling within the fields of the local authorities. In one manner or another, however, they do almost everything short of this. They give information and advice. They hear complaints, make investigations, settle disputes, and order remedies to be applied. They lay down rules and regulations as to organization, procedures, methods, objectives, qualifications, and equipment which the local authorities must observe. They disallow local ordinances held to have been issued in excess of proper power. They assent or disagree to the doing of many things which are allowed by the national laws to be done only with the approval of the appropriate central department. They audit local accounts; and, in the absence of anything corresponding to our constitutional or statutory municipal debt limits in the United States, they keep local jurisdictions solvent by passing upon their proposals for borrowing money—a power, it will be perceived, which gives them a great deal of control over what the English call

<sup>1</sup> The functions here in mind are those belonging primarily to local authorities, but exercised under central supervision or control, as distinguished from national services centrally administered, such as health and unemployment insurance and old age pensions.

"municipal trading," *i.e.*, the public ownership and operation of gas and electric light plants, waterworks, tramways, and similar utilities. It is not to be inferred that all of the departments named exercise these and other functions on precisely the same lines. Some have been given powers not possessed by others, *e.g.*, the Ministry of Health in relation to auditing; and even a single department is differently situated in relation to different local agencies and different forms of local activity. All told, however, central control is both wide and deep; not only so, but it is steadily penetrating to new phases and levels. Though often complained of as paternalistic and out of keeping with English traditions of local independence, it springs naturally from the conditions, needs, and ideas of a technological age, and it is difficult to see how it can ever in future be much reduced.<sup>1</sup>

English local government has been fairly revolutionized in the last hundred years, and it nowadays presents many admirable features. Not the least of these is the mode or manner of the central control just described. In the United States, where likewise there is vigorous central control in all of the states, regulations are laid down largely by the legislature, with little discretion left to executive departments and administrative boards. This can mean only one thing—rigid uniformity, with local jurisdictions throughout a state treated precisely alike, however different their conditions and needs may be. The English method involves only very broad and general legislative regulation, leaving it to the Ministry of Health, the Board of Education, and similar administrative agencies to make or permit local adaptations as required in individual situations, and also enabling changes to be introduced on the basis of experience, or of altered conditions, which are apt to be obtained with difficulty when it is necessary to wait for a law to be amended. Such flexibility gives the English plan a decided advantage over the American. We can hardly hope to attain it ourselves, however, for the reason that

A contrast of  
English and  
American  
methods

<sup>1</sup> For further discussion of the relation of central and local authorities, see J. P. R. Maud, *op. cit.*, Chap. viii; W. B. Munro, *The Government of European Cities* (rev. ed.), Chap. iii; W. A. Robson, *The Development of Local Government*, Pt. ii; and J. Redlich and F. W. Hirst, *op. cit.*, II, Pt. vi, Chaps. i-v. The significant subject of grants-in-aid is treated in S. and B. Webb, *Grants-in-Aid* (new ed., London, 1920). A. F. Macdonald, *Federal Aid* (New York, 1928), is indispensable on American experience with such grants.

under our scheme of separation of powers no legislature would be willing to leave so much discretionary authority to state officials and departments acknowledging no responsibility—in the English sense—to the legislative branch.

Problems of  
local govern-  
ment reform

Excellent as the general scheme of local government in England undoubtedly is in many of its features, it is by no means immune from doubts and criticisms, and people who supposed that the Local Government Act of 1929 had solved the most pressing problems are finding themselves wholly mistaken. Many wonder whether county, and especially borough, government will not eventually break down under a steadily growing burden of duties and responsibilities which it was not designed to bear, aggravated as they have been in later years by the economic depression. Notwithstanding the simplification that has taken place in the last half-century, many more consider that there is still too much confusion of local government areas and believe that much would be gained from a structural and functional reorganization on the principle of but one primary local government for any given area—presumably the county borough for large urban centers and the administrative county for rural and smaller urban localities. Starting with this opinion, Labor goes on to argue for a greater amount of “home rule,” for progressive development of municipal activity, and in particular for more vigorous extension of social and cultural services such as education, public health, and housing. The party, indeed, has sponsored a proposal that the whole existing relation between the national and local governments be discarded, and that henceforth local authorities be regarded as empowered to do everything not specifically reserved to the government at London. There are also suggestions for regional groupings, in recognition of the decided tendency of smaller administrative areas, under twentieth century conditions, to find themselves lacking either the means or the will to carry out the functions with which they have been entrusted, and also with a view to opening a way for devolution on more comprehensive lines. Discussion of these and other proposals is going on at a lively pace, with as yet no unanimity of opinion, even in the ranks of Labor, where by far the keenest interest in the subject exists.

In all earlier times, local government reform has proceeded on characteristic English lines—slowly, belatedly, grudgingly, and

in piecemeal fashion, yet, given time enough, with far-reaching consequences. The same is likely to be true in the future. Left to itself, local government tends to fall into the static condition of English counties and boroughs in the seventeenth and eighteenth centuries. In this present age, social, economic, and psychological forces are at work which, one can be sure, will for a good while keep counties and boroughs and their multifold problems in the thick of scholarly investigation, parliamentary debate, and popular discussion. Nevertheless, a statute here, an order in council there, and an administrative rule yonder will doubtless continue to be the means by which the house is progressively rebuilt to meet the needs of its tenants.<sup>1</sup>

<sup>1</sup> Illuminating discussions of present problems of local government reform will be found in W. A. Robson, *The Development of Local Government*, especially Pt. i, and "The Central Domination of Local Government," *Polit. Quar.*, Jan.-Mar., 1933. Cf. a recent survey in H. Finer, *English Local Government* (London, 1934); S. and B. Webb, *A Constitution for the Socialist Commonwealth of Great Britain*, Pt. ii, Chap. iv; G. D. H. Cole, *The Future of Local Government* (London, 1921); and H. J. Laski, *The Problem of Administrative Areas* (Northampton, Mass., 1918). A wealth of material on the subject will be found in *First Report of the Royal Commission on Local Government*, Cmd. 2506 (1924-25), and *Second Report of the Royal Commission on Local Government*, Cmd. 3213 (1928-29).



## CHAPTER XX

### UNITED KINGDOM AND COMMONWEALTH OF NATIONS

English gov-  
ernment and  
imperial gov-  
ernment in-  
terlocked

The constitution, government, and parties described in the foregoing chapters are those of England primarily. In varying degrees, they are shared, however, by Wales, Scotland, and Ireland. Furthermore, tied in with the political institutions of the British Isles is a great system of imperial and colonial government, extending over upwards of a fifth of the habitable surface of the globe and applying, in one form or another, to nearly the same proportion of the world's population. To describe the governments operating in the widely dispersed lands in which allegiance to the British crown is acknowledged is no part of the plan of this book. Whitehall and Westminster--Buckingham Palace, too—are, however, foci from which lines of political power and influence radiate to all corners of the earth where the Union Jack is flown; and a rounded view of the government of even England alone requires some attention to the ways in which it is geared to the government of an empire.

Wales

Wales need not detain us, because for governmental purposes that historic principality has long been to all intents and purposes merged with England. Edward I drew a large part of the country under English control in 1284, organized it in six counties on the English model, introduced the English judicial system, and—half with serious intent, half in jest—bestowed upon his son, in 1301, a title ever since borne by the recognized heir to the English crown, *i.e.*, “prince of Wales.” Henry VIII completed the work by setting up six more counties, giving both the counties and the leading towns the right to be represented in the House of Commons, and abolishing all local laws and customs which were at variance with the laws of England. Thenceforth, in so far as Wales had any separate history at all, it was cultural rather than constitutional. In 1747, indeed, it became a rule that in all acts of Parliament “England” should be construed to include Wales unless otherwise specified. There is a limited amount

of legislation specially for Wales; but the great bulk of statutes applying to England apply equally, and without saying so, to the principality. The same is, of course, true of the common law as well. One interesting divergence, which has a certain amount of political significance, arose in 1920, when, after prolonged agitation on the subject, an act of Parliament disestablished and disendowed the Anglican Church in both Wales and the adjoining closely-related English county of Monmouth. Proposals for devolution, in which Wales almost always figures as an area to be fitted out with a regional parliament, has given some stimulus, too, to a movement for autonomy, thus far to be discerned chiefly in the north and west, where the population is more purely Welsh in speech and tradition and most aware of its special problems of labor, agriculture, and education. For a good while to come, however, Wales gives promise of remaining, constitutionally, about where it now is.

To the north of England lies Scotland, separated from the larger country by no important physical barriers, and seemingly destined by nature to form, in conjunction with it, one homogeneous state. Historical circumstances, however, made a political union between the two lands exceedingly difficult to bring about. Even yet there is not complete amalgamation; and here, too, recurring discussion of schemes of devolution suggests that existing bonds may in future be relaxed rather than the reverse. Like Wales, Scotland long went its own way practically unmolested, although not entirely uninfluenced, by its more powerful neighbor. In 1603, James VI of Scotland ascended the throne of England as James I, and thenceforth for a century the two countries were united through the crown, but otherwise separate, each with its own parliament, its own established church, its own laws, courts, army, and system of finance. Finally, in 1707, the Scots, grudgingly induced by the advantages to be gained on economic lines, accepted an act of union under which the two countries were erected into a single kingdom (thenceforth known as Great Britain) and, in lieu of a separate parliament, received the right to be represented in both houses of the parliament at Westminster. Union, however, was not to mean complete absorption. Scottish law—civil and criminal—was to go on unmolested; likewise the country's judicial system, the established Presbyterian church, and a scheme of publicly-supported educa-

Scotland:

1. Constitutional status and government

tion such as England herself knew nothing of for another two hundred years.

From Queen Anne to our day, Scotland's constitutional position has remained essentially unchanged. All general legislation for the country is enacted at Westminster—much of it in the form of measures applying to Scotland, England, and Wales indistinguishably, although in weightier matters it is customary to give Scotland the benefit of a separate statute incorporating minor variations as may seem desirable; and the country is further recognized as an entity for legislative purposes by maintenance in the House of Commons of a standing committee, containing all of the Scottish members, to which every public bill relating exclusively to that area is referred.<sup>1</sup> If Scotland is not specially excepted from a statute drawn in general terms, it is—as in the case of Wales—to be regarded as included. The country is also given special recognition on administrative lines through the presence in the cabinet of a secretary of state for Scotland,<sup>2</sup> who heads an establishment containing under-secretaries, a lord-advocate, a solicitor-general, a registrar-general, a board of health, and numerous other officers and boards corresponding broadly to those functioning in England and Wales. Counties and boroughs serve as the principal areas of local administration and self-government, and, though differing at some points, tend constantly to grow more like those in England. The system of courts is still very different from the English. The same is true of civil law and procedure, although criminal law has become practically identical in the two countries. The separate established church persists; likewise a distinct system of public education.

2. Home rule  
movement

On the whole, Scotland's experience with the union has been satisfactory. Neither the material prosperity that flowed from it nor the preponderance which Scots early acquired in all ranks of the government service has, however, prevented the growth in the last half-century of a lively movement for Scottish home rule. The example of Ireland has had something to do with it. Talk of devolution has contributed its share. The resurgence of nationalist feeling both before and after the World War has lent

<sup>1</sup> See p. 248 above.

<sup>2</sup> Originally established at the time of the union, this office was replaced by others of different nature after 1745 and was revived in its present form as recently as 1926.

impetus. Complaints concerning the existing arrangements, as voiced in the press, in local government bodies, and by a vigorous Scottish Home Rule Association, run somewhat as follows: (1) legislation on matters of vital concern to Scottish well-being either fails to be enacted at all or is obtained only after disastrous delays; (2) progressive measures for Scotland are repeatedly overridden by Conservative English majorities; (3) as a rule, the estimates for Scotland are passed in the House of Commons without any discussion whatsoever; (4) much expenditure to which Scottish taxpayers are expected to contribute, while euphoniously termed imperial expenditure, is really only English expenditure; and (5) it is anomalous for Scotland to have (in the office of the secretary of state) what is in effect a national executive without having also a national parliament to exercise control over it. Much might be said in reply to these allegations—for example, that, as has been indicated, when great measures which it is desired to apply to both England and Scotland are under consideration, a separate act for Scotland is usually passed, in order to facilitate complete adaptation to Scottish needs and desires, even though such considerateness makes large additional demands upon the time of a hard-pressed Parliament. Nearly a score of motions and bills looking to home rule for Scotland have made their appearance at Westminster since 1889. The people generally cannot, however, be said to be stirred up over the matter, and here again nothing seems likely to happen unless some comprehensive plan of devolution wins adoption.<sup>1</sup>

Far less amicable and stable have been the relations between England (Great Britain since 1707) and Ireland. After all, Scotland cast in her lot with England voluntarily, because she saw that it was to her interest to do so. Ireland, however, was repeatedly invaded and conquered, held for centuries in involuntary dependence, and finally forced into a legislative union by a purely British decision backed up with clever political legerdemain. She may have derived some benefit from her English connections; in certain directions she undoubtedly did so. But she always regarded herself as a conquered and oppressed country, the prey of English landlords and tax-gatherers; and for hundreds of years her history was largely a story of efforts to

Ireland's  
home-rule  
problem to  
1914

<sup>1</sup> A review of Scottish home rule bills will be found in W. H. Chiao, *Devolution in Great Britain*, Chaps. iv-v.

confine British control within the narrowest limits possible, as the next best thing to eliminating it altogether. In our own day, these efforts have so far succeeded that a sixth of the island has attained the status of home rule long coveted by the other five-sixths, while the five-sixths themselves, for which this concession had ceased to be an acceptable solution, have been erected into an autonomous "free state." During a decade which included the World War, the political aspirations of Ireland furnished one of the two or three most explosive and baffling constitutional questions with which harassed British statesmen were called upon to deal.

The tortuous story of the Irish controversy and settlement must be read in other books than this.<sup>1</sup> A few main facts may, however, be noted. By the famous Act of Union of 1800 (effective at the beginning of the following year), Ireland was joined with Great Britain to form the United Kingdom of Great Britain and Ireland, losing her separate parliament, as had Scotland a century earlier, and receiving representation for the first time at Westminster, with executive authority exercised through a viceroy acting in the name of the crown. Ostensibly, the union was for all time. Hardly was the ink dry on the statute, however, before the arrangement became the object of sullen opposition, punctuated with violent demonstrations; and the protest grew until by the second half of the century the "Irish question," presenting many angles but heading up in a demand for "home rule" with a restored parliament, became a veritable politicians' nightmare. Gladstone's home rule bills of 1886 and 1893 have been mentioned in another connection.<sup>2</sup> Neither became law, but in succeeding decades home rule for the disaffected island (stoutly opposed by the Conservatives) ranked as a principal objective of the Liberal party; and in 1913, with feeling running so high that civil war in Ireland—perchance in England too—was imminently threatened, the Lloyd George government twice got a bill on the subject through the House of Commons. All that seemed necessary in order to make the measure law under

<sup>1</sup> E.g., E. R. Turner, *Ireland and England* (New York, 1919); W. A. Phillips, *The Revolution in Ireland, 1906-1923* (New York, 1923); R. M. Henry, *The Evolution of Sinn Féin* (London, 1920); and A. C. White, *The Irish Free State: Its Evolution and Possibilities* (London, 1923). For briefer treatment of the subject, see F. A. Ogg, *English Government and Politics*, 688-716.

<sup>2</sup> See p. 317 above.

the terms of the Parliament Act, and over the head of the sturdily resisting House of Lords, was for the popular chamber to pass it once more; and in the summer of 1914 this condition was met. Before the royal assent was asked, however, the government so far drew back as to accept a plan for a conciliatory amendment, and the compromise, itself unfavorably amended in the House of Lords, was under debate in the House of Commons when, suddenly, the whole political scene was changed by the outbreak of the World War. Under stress of titanic international combat, even the question of Ireland paled. The amendment was dropped, and the act as passed was placed upon the statute book. The government, however, promised that no effort would be made to put the measure into effect until after the end of the war (or in any event until after a year, if the war should not last so long), and furthermore not until after it should have been modified on some such lines as had been proposed.

In point of fact, the hard-won statute never went into effect at all; for, ironically enough, by the time when the way was open to recast it and put it into operation, the bulk of Ireland would have none of it. The war lasted longer than had been expected, and while it was running its weary course central and southern Ireland fell completely under the dominance of an organization, Sinn Féin,<sup>1</sup> which had no interest at all in mere home rule and would be satisfied with nothing less than the severance of all British connections and the establishment of an independent Irish republic. How thoroughly the situation had changed was revealed startlingly at the parliamentary election of 1918, when out of a total of 105 seats to which the island was entitled Sinn Féin, now operating as a political party, won 73 and the Nationalists—the historic party of home rule—only seven. The remaining 25 were garnered by the Conservatives in the northeastern counties of Ulster, which, being mainly Protestant, largely industrial, and closely bound to Great Britain by economic interests, had been opposed to even the home rule program. Refusing to have anything to do with a British-controlled parliament, the Sinn Féin contingent set itself up at Dublin as a *Dáil Éireann*, or national assembly; Eamonn de Valera was elected president of the “republic”; and the country passed into a period of open rebellion and civil war. Recognizing that there were

The Irish settlement of  
1920-22

<sup>1</sup> An old Irish term denoting “ourselves alone.”

now, in a fuller sense than ever before, two Irelands—one Catholic and agricultural, the other Protestant and industrial<sup>1</sup>—the Parliament at Westminster passed, in 1920, a new home rule act, repealing the suspended measure of 1914 and providing for an essentially separate home rule régime for each of the two sections. Led by Sinn Féin, the south and center, however, held out stubbornly against the plan; and though Ulster accepted it and is governed under it today, it never was more than theoretically in effect in the larger of the two areas. Driven still further along the unavoidable path of compromise, the Coalition government took steps eventuating in an historic “treaty” with the Sinn Féin leaders in 1921; and under terms of this agreement, in 1922, was set up the Irish Free State—not the independent republic that had been sought, to be sure, yet a political entity with substantially the status of Canada and other British dominions, and therefore largely autonomous and self-governing.

The Free  
State

The settlement was far from satisfactory to the Sinn Féin elements, and the new régime was installed to an accompaniment of continued strife and even civil war. A written constitution, duly approved at London, was, to be sure, adopted in 1922; and a government, Irish from top to bottom (save only for a British governor-general), was organized, with as full independence as that enjoyed by any sovereign state except in a few domains—chiefly foreign relations, defense, and judicial appeal—where the treaty imposes restrictions. For a time, the country seemed to be gaining a somewhat settled position in the family of self-governing peoples which we now know as the British Commonwealth of Nations. More recently, however, it has appeared that the supposed settlement was really no settlement at all, at all events not a final one. Large and influential elements led by Mr. de Valera have revived the demand for outright independence; incessant conflict between the London and Dublin authorities has resolved itself into not only economic war but also deadlock on constitutional arrangements; in 1933 the oath of allegiance to the British Crown was abrogated by unilateral Irish action; in the same year, bills were introduced and passed virtually without opposition through both branches of the

<sup>1</sup> Speaking but broadly, of course. For example, almost a third of the people of the Ulster counties which later refused to join the Free State are Catholics.

Dublin Parliament to do away with various other symbols of British authority, including the need for the formal assent of the governor-general to legalize acts, and also the right of appeal from Irish courts to the judicial committee of the privy council; and at the date of writing (January, 1934) some sort of test—presumably either a parliamentary election or a direct plebiscite—seemed not unlikely as a means of determining whether the de Valera government's plan to proceed with a declaration of full independence had the popular support claimed for it. The legal right of the dominions to secede having been all but recognized in the Statute of Westminster of 1931,<sup>1</sup> it further seemed assured that if secession were undertaken by the Free State alone, no forcible resistance would be offered by the British government. If, on the other hand, de Valera and his supporters were to persist in their intention to induce or compel the six counties of Ulster (which refused in 1922 to cast in their lot with the 26 forming the Free State) to reverse their attitude and join in creating an all-Irish republic, the consequences would certainly be serious.

As for the governmental system of the Free State, the fundamentals can be indicated briefly. A Chamber of Deputies (*Dáil Eireann*) is elected on lines similar to those prevailing in England, except that proportional representation is employed and there is no plural voting. A Senate, renewable by thirds every four years, is elected by (since 1928) an electoral college consisting of the senators and deputies sitting as one body. Money bills may become law without the Senate's assent; other kinds of bills, too, by a procedure speedier and easier than that required under similar circumstances at Westminster. As a symbol of continuing connection with the British crown, there is a governor-general, who, representing the king, is nominally the chief executive. The actual, working executive is, however, as at London, a group of ministers, headed by a president of the executive council, whose position is essentially that of prime minister; and, though starting with some experimental features that were out of line, the cabinet system now works substantially as in Britain. Indeed, one may say, broadly, that the scheme of government as a whole is very similar to the British; for although several experimental, and even unique, features were

<sup>1</sup> See p. 423 below.



introduced originally, practically all of them have since been dropped.<sup>1</sup>

Northern  
Ireland

Closely bound to Great Britain, and losing no opportunity to proclaim full satisfaction with the arrangement, yet endowed with home rule, Northern Ireland is governed under the Government of Ireland Act of 1920, as modified by a supplementary measure of 1922 passed in anticipation of the six counties' decision not to allow themselves to be absorbed into the Free State. In the matter of autonomy, the region stands somewhere between the position of Scotland and that of the Free State. It has its own parliament, as Scotland does not; but its powers of separate action fall considerably short of those that can be exercised at Dublin. Though under a home rule régime, representation at Westminster continues (13 seats). Originally elected under a system of proportional representation, the local House of Commons (52 members) has since 1929 been chosen in single-member constituencies,<sup>2</sup> under suffrage and other arrangements much like those in Britain. A Senate consists of two ex-officio members and 24 other persons elected by the lower house on the proportional plan. If the two houses disagree on a non-money bill, the matter goes over to the next session, at which, if there is still disagreement, the governor, as chief executive, may call the chambers into joint session, and thereupon the issue is decided by a majority vote, the commoners, of course, having a decided numerical advantage. In the case of money bills, the second chamber may reject, but not amend. If, however, the House of Commons refuses to acquiesce, a joint sitting, which settles the fate of the measure, takes place in the same session. All executive power continues to be vested in the king, but is exercised by a governor, through a group of responsible ministers constituting a cabinet, on the plan familiar throughout the Empire.<sup>3</sup>

<sup>1</sup> On the Free State and its constitutional system, see F. A. Ogg, *English Government and Politics*, 718-744, and for fuller treatment, L. Kohn, *The Constitution of the Irish Free State* (London, 1932); D. Figgis, *The Irish Constitution* (Dublin, 1923); J. G. S. MacNeill, *Studies in the Constitution of the Irish Free State* (Dublin, 1925); and S. Gwynn, *The Irish Free State, 1922-1927* (London, 1928). Political aspects are dealt with fully in W. Moss, *Political Parties in the Irish Free State* (New York, 1933).

<sup>2</sup> Except that the four representing Queen's University, Belfast, are still elected on the proportional plan.

<sup>3</sup> A. Quekett, *The Constitution of Northern Ireland: Part I, The Origin and Development of the Constitution* (Belfast, 1928); Part II, *The Government of Ireland Act, 1920, and Subsequent Amendments* (Belfast, 1933).

Great Britain and Northern Ireland have a combined area of 95,000 square miles and a population of approximately 48,000,000. The British flag, however, flies over a total of 10,477,000 square miles and a population of 487,137,000—more than a quarter of the land area, and nearly a quarter of the inhabitants, of the globe. Historically, this far-flung congeries of lands and peoples and civilizations has been known as the “British Empire,”<sup>1</sup> and in both official and common parlance it is still spoken of as such. Perhaps there is no better term by which to designate a political structure which, despite all that has happened, is still to a certain extent an entity. With the growth, however, of self-government, and, in these later days, of almost complete autonomy, in half a dozen of the principal territorial divisions, a situation has arisen in which it is most in accord with the facts to view the whole collection of areas owing allegiance to the crown in the dual aspect of (1) the United Kingdom and its non-self-governing dependencies, and (2) the United Kingdom and its approximately co-equal associates, the self-governing dominions, comprising (along with the United Kingdom itself) what is nowadays known as the British Commonwealth of Nations. Speaking strictly, only the first of these two groupings is of the nature of empire; indeed, it is in relation to India alone that the sovereign bears the title of emperor.

Nature of the  
British Em-  
pire

Our concern being, for purposes of this book, principally with the ways in which the governmental system described in earlier chapters is affected by the exercise of political control over lands across seas, it would, from a certain point of view, be proper to say little or nothing about the half-dozen great dominions; for over them, in these days, little control is exercised. The constitutional processes by which their autonomy has been achieved and the bases on which it now rests, are, however, of significance for every student of European and comparative government; besides, there are still a few important connections with both Westminster and Whitehall. Accordingly, after commenting briefly on the British government's relations with the non-self-

<sup>1</sup> Not with entire accuracy since certain of the areas included—chiefly India and the protectorates—are not technically parts of the Empire. The Empire's heterogeneity is pictured vividly in A. J. Toynbee, *The Conduct of British Empire Foreign Relations Since the Peace Settlement* (London, 1928), 3-8, and an admirable account of its lands and peoples will be found in C. B. Fawcett, *A Political Geography of the British Empire* (Boston, 1933).

governing areas, we shall pass in rapid survey some salient aspects of the Commonwealth.

Classes of dependencies:

1. Semi-autonomous areas

From the viewpoint of their relations with the government at London, the dependencies fall into three or four main categories or classes. To begin with, there are certain ones which are sometimes described as semi-autonomous. The principal examples are two, of very unequal magnitude, *i.e.*, India and Malta. Technically, India is not a part of the British Empire, even in the narrower meaning of the term suggested above, but rather a distinct, although associated and dependent, empire,<sup>1</sup> and—aside from Ireland—has for a good while been the most unsettled politically of all countries or regions for which the British government has assumed responsibility. A constitution of 1919, applying to those portions of the country included in British India proper, sanctions a broad division of offices, powers, and functions between British and native authorities and marks a genuine step in the “gradual development of self-governing institutions” which has of late been London’s professed policy. But it stops far short of full autonomy, and later years have been filled with agitation and strife, investigations and reports, round-table conferences, and other as yet futile efforts, violent or otherwise, to bring about a solution.<sup>2</sup>

2. Crown colonies

Then there are the so-called crown colonies. The term is less useful than it once was, because wide differences of political organization have grown up among the dependencies to which it is applied. Speaking broadly, these numerous colonies are alike in that they have comparatively few inhabitants of European descent and are not considered capable of self-government on approved British lines. But, as in the case of Bermuda and the Bahamas, they may have an elective lower chamber and an appointive upper one; like Jamaica, Cyprus, and Ceylon, they may have a legislative council of a single house, partly elective and partly appointive; like Trinidad and British Honduras, they

<sup>1</sup> Consisting of British India proper and the native states, the latter having the status of protectorates.

<sup>2</sup> W. Y. Elliott, *The New British Empire* (New York, 1932), Chap. vi; C. P. Ilbert, *The Government of India* (Oxford, 1922); D. N. Banarjee, *The Indian Constitution and Its Actual Working* (London, 1926); W. I. Hull, *India's Political Crisis* (Baltimore, 1930); T. A. Bisson, “The Crisis in India; Its Constitutional Basis,” *For. Pol. Inf. Service*, Vol. 6, No. 19, Nov. 26, 1930; Marquess of Reading, “The Progress of Constitutional Reform in India,” *Foreign Affairs*, July, 1933.

may have a council which is wholly appointive; or, like Gibraltar and St. Helena, they may have no legislative body at all. There is a tendency for such colonies to rise in the scale. But progress is slow, and military or naval considerations frequently play as important a part as anything else in determining the status assigned them. Much of their legislation comes from London in the form of orders in council; and it goes without saying that the governor, appointed and instructed by the Colonial Office, is the principal figure in their political life.<sup>1</sup>

Next may be mentioned the protectorates—not properly parts of the Empire, although in some cases falling short only because, for one reason or another, the formalities of annexation have not been carried out. Of protectorates, there formerly were more than at present. Various developing African territories have passed through this stage into something else; Egypt, indeed, after existing unwillingly as a protectorate from 1914 until after the World War, was in 1922 proclaimed “an independent sovereign state,” even though independence is considerably qualified by the recognition of special interests on the part of the British Empire and by the presence of a British military force. Other divisions of Africa, notably Uganda, Kenya, Nyasaland, Bechuanaland, and Somaliland, still fall in the category of protectorates; as do also numerous native principalities in India. In theory at least, the protectorates are simply native states which are safeguarded by British arms and taken care of in their international relations by British diplomacy. Actually, some of them, *e.g.*, Bechuanaland and Swaziland, are accustomed to a large amount of British control in their domestic affairs, and hence are pretty much in the position of colonies.<sup>2</sup>

3. Protec-  
torates

The peace arrangements at the close of the World War added still another class of territories for which, although again not properly parts of the Empire, some degree of responsibility is nevertheless assumed, *i.e.*, the mandates. Mandates, too, differ among themselves; but the general principle underlying them is that the mandatory state shall be answerable for the peace,

4. Mandates

<sup>1</sup> E. C. S. Wade and G. G. Phillips, *Constitutional Law*, 345-352; A. B. Keith, *Constitution, Administration, and Laws of the Empire* (London, 1924), Pt. ii, Chap. vi; A. L. Lowell, *op. cit.*, II, Chap. lvi.

<sup>2</sup> W. Y. Elliott, *The New British Empire*, Chap. vii; A. B. Keith, *op. cit.*, Pt. ii, Chap. vii.

development, and general well-being of the areas assigned to it, and shall make periodic reports of its trusteeship to the League of Nations. Some mandates associated with British authority—*e.g.*, Palestine, Tanganyika, and British Togoland—are under the direct control of the London government, the administration of their affairs being one of the newer tasks of the Colonial Office. Others are allocated to certain of the dominions, *e.g.*, former German Southwest Africa to the Union of South Africa and former German New Guinea to Australia.<sup>1</sup>

Imperial control over the dependencies

In differing degree, but to a large extent in all cases, the dependencies are governed from London, or at all events by authorities sent out from that quarter. Where there are local legislatures, there is, of course, a certain amount of locally enacted legislation, subject to veto by the governor or disallowance from London. Most legislation for the crown colonies comes, however, from the imperial capital. Some of it is enacted by Parliament, usually on subjects of broad importance throughout the Empire as a whole. Most of it, however, takes the form of orders in council, applying either generally or to particular colonies as designated.<sup>2</sup> Executive and administrative authorities range from the king and cabinet through certain of the ministries or executive departments to the governor and his subordinates in the individual colony. It is hardly necessary to say that the sovereign, although considered an indispensable symbol of imperial unity, has personally no more to do with colonial affairs than with War Office matters or finance. The cabinet, naturally, has much to do with them, especially as to larger lines of policy. And of course two of the departments—the Colonial Office and the India Office—give all of their time and attention to the affairs of the domains under their respective jurisdictions. Judicial establishments are created and regulated by imperial law, judges being recruited almost entirely from the governing country. From all dependencies, appeals can be carried to the judicial committee of the privy council in London—an agency which, in the absence of any single system of law or of law courts throughout the Empire as a whole, nevertheless (through the advice which it gives to the

<sup>1</sup> A. B. Keith, *op. cit.*, Chap. viii.

<sup>2</sup> The power of making law for the crown colonies is, it will be recalled, a surviving element of the royal prerogative.

crown on the disposition of appealed cases) is able to preserve some common standards of jurisprudence.<sup>1</sup>

Seventy-five years ago, it was common belief in Britain, not only that colonies were of doubtful value, but that such overseas dependencies as Canada and the Australian settlements would grow to nationhood and then fall apart from the mother country. As the nineteenth century entered its closing decades, however, a different attitude developed. Various writers, notably Sir John Seeley, expounded the history of the Empire in a fashion to stir pride in the past and ambition for the future.<sup>2</sup> Simultaneously, the growth of nationalism and militarism in Continental Europe led the British government to put a new value on the colonies as sources of supplies and as potential allies. Already some of the areas were far advanced in self-government, and nothing was more certain than that as time went on there would be further development in that direction. This, however, from the new viewpoint, did not necessarily imply independence; it need involve nothing more than progressive readjustment of the relations between colonies and mother country while all remained under a common flag and loyal to a common crown. For reasons both of sentiment and of interest, the colonies reciprocated; and from about 1870 much effort was devoted, on both sides, to finding some form of organization that would reconcile a large measure of autonomy on the part of the colonial governments with a considerable degree of unity in imperial affairs. The principal practical problems were as to

Rise of the  
"Common-  
wealth of  
Nations"

<sup>1</sup> The judicial committee as it now stands dates from 1833. It includes the Lord Chancellor and any former incumbents of his office, the seven lords of appeal in ordinary, the Lord President of the Council, and other privy councillors who hold (or have held) high judicial office, among them varying numbers of judicial personages connected with overseas superior courts. Addressed formally to the crown, appeals are heard, and recommendations as to the disposition of them are made, by the committee (actually in each instance by a panel of five members); and the judgment against which an appeal is brought is sustained or reversed by the crown in accordance with the recommendation made. Without being such in form (since it is not technically a court, but only an advisory body), the judicial committee serves as a supreme tribunal for all British and British-controlled jurisdictions for which that function is not performed by the House of Lords. See p. 377 above; cf. F. A. Ogg, *English Government and Politics*, 755-760; A. B. Keith, *Constitutional Law of the British Dominions*, 265-277.

<sup>2</sup> See especially Seeley's *The Expansion of England*, published in 1883. Cf. R. Muir, *The Expansion of Europe* (Boston, 1917), Chaps. vii-viii.

(1) where to draw the line between matters to be regarded as colonial and those to be regarded as imperial, and (2) how to draw it, *i.e.*, whether in a hard and fast manner by constitutional stipulations or loosely and flexibly on a basis of voluntary coöperation and agreement; and proposals ranged all the way from mere preferential trade agreements to the admission of the colonies to a direct share in some sort of super-government centering at London. As early as 1887, the subject was taken up at an imperial conference attended by prime ministers and other representatives of the British and colonial governments. Other such meetings were held in 1897, 1902, and 1907; and on the last occasion a permanent organization was formed, with a view to a meeting every four years.

Contribution  
of imperial  
conferences

It is in successive imperial conferences, particularly the more recent ones, that the unique relationships of the United Kingdom and its co-equal associates in the Commonwealth of Nations have mainly been worked out. Some progress had been made before the World War. But it was the free and generous assistance given the mother country by the colonies in that great hour of need that finally clinched their claims not only to a more direct voice in the conduct of Empire foreign affairs, but to further freedom in the management of their own relations with foreign states, and to a clearer recognition of their domestic autonomy. The Conference of 1921 agreed that events during the war years had completely established the right of the self-governing colonies to be considered co-equals with the mother country in foreign affairs. That of 1923 took steps, in relation to treaty-making, to make this right effective. That of 1926 was signalized by the preparation of a memorable document, known as the Balfour Report,<sup>1</sup> in which the self-governing areas under the British flag (including the United Kingdom itself) were described as "autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the crown, and freely associated as members of the British Commonwealth of Nations"; and the report went on to apply the formula by suggesting essential steps—some of them requiring the repeal or amendment of

<sup>1</sup> See *Summary of Proceedings of the Imperial Conference of 1926*. Cmd. 2768 (1926).

existing statutes—by which the declared equality might be reconciled with the bed-rock principle of imperial unity.

Finally, an imperial conference of 1930, adopting recommendations made by a preliminary conference in the previous year, prepared the way for the enactment by Parliament in 1931 of a momentous measure, the Statute of Westminster, establishing as law many fundamental regulations concerning the status of the dominions—in domestic, imperial, and foreign affairs—previously resting only on convention. In the nature of the case, the whole matter has been one of almost infinite complexity and difficulty, and even now plenty of highly important problems remain unsolved. Uncertainty is increased by the fact that, whereas the Statute of Westminster was supposed to be adopted, or ratified, by each of the dominions on its own part, three, *i.e.*, Australia, New Zealand, and Newfoundland, have for various reasons failed to act. Indeed in the three that have ratified there is a growing suspicion not only that the Balfour Report was right in saying that “nothing would be gained by attempting to lay down a constitution for the British Empire,” but that it would have been better to allow even those matters which are dealt with in the Statute to work themselves out flexibly on the basis of understanding and usage. However that may be, the Statute is the latest word on British-Dominion relations; and in the following pages it will be considered as potentially, even if not as yet in all respects actually, effective.<sup>1</sup>

Of all the self-governing areas associated with the United Kingdom in the Commonwealth, only two—Canada and New Zealand—are by historical designation “dominions.”<sup>2</sup> Four others, however, were termed such in the Statute of Westminster and other recent documents, and accordingly there were, until

The Statute  
of Westminster  
(1931)

The dominions  
and their  
governments

<sup>1</sup> The developing relations of the self-governing colonies with the United Kingdom to the period of the World War are fully and clearly described in H. D. Hall, *The British Commonwealth of Nations* (London, 1920). The subject is brought down to 1931 in W. Y. Elliott, *The New British Empire* (New York, 1932), and still farther in R. A. Mackay, “Changes in the Legal Structure of the British Commonwealth of Nations,” *Internat. Conciliation*, No. 272, Sept., 1932, and K. C. Wheare, *The Statute of Westminster* (London, 1933). For numerous pertinent documents, including the Statute of Westminster, see A. B. Keith, *Speeches and Documents on the British Dominions, 1918–1931* (London, 1932).

<sup>2</sup> The title “dominion” owes its origin to the Conference of 1907, which chose it as a means of distinguishing the areas enjoying responsible government from the dependent Empire.



recently, six in all—two (Canada and Newfoundland) in North America; three (Australia, New Zealand, and South Africa) in the southern hemisphere); and one (the Irish Free State) at Britain's own door. At the present time, the number is, rather, five, for the reason that, following an investigation by a royal commission into its hopelessly muddled finances in 1933, Newfoundland, in February, 1934, relinquished self-government and dominion status, at all events for some time to come. Should the Irish Free State realize its ambition to achieve full independence, the number would, of course, be reduced still further. On the other hand, a new dominion of East Africa is being talked about, and the Labor party has favored making a dominion out of India. Except the Free State, all of the existing dominions have been peopled predominantly by English-speaking folk, and on that account are far advanced in the art of self-government. Among their governments, the student of comparative politics can find plenty of interesting and significant differences; yet, for purposes of a bird's-eye view, all are pretty much of a pattern. In every case, there is a written constitution, drawn up and adopted locally, although originally effective only by virtue of having been enacted by the British Parliament in the form of a statute. The youngest members of the group—South Africa and the Irish Free State—are, under terms of the Statute of Westminster, free to amend their constitutions independently; in the case of Canada, every amendment, and in that of Australia every one altering the relations between the states and the federal government, must be enacted in the form of a statute of the British Parliament.<sup>1</sup> In every dominion, the crown is represented by a governor or governor-general, who since the Imperial Conference of 1930 bears precisely the same legal relations to the dominion government that the king himself sustains with the British government. In every case, the cabinet system exists and operates on lines substantially like those prevailing at London. In every case, there is a bicameral parliament. The second chamber is made up variously—by appointment (Canada), by popular election (Australia), by election by provincial legislatures (South Africa), by election by the upper

<sup>1</sup> This limitation arises in the one case partly and in the other entirely from the desire of the provinces or states to be protected in this way against involuntary loss of powers.

and lower houses (Irish Free State)—but the lower house is in all instances chosen in substantially the fashion that a person familiar with English political usage would expect. One rather fundamental difference of form appears. Some of the dominions have unitary governments, some federal. New Zealand and the Irish Free State show no trace of federalism; South Africa, though created by uniting separate political areas, has a government that does not quite qualify as federal; Canada and Australia, likewise sprung from union of separate colonial areas or units, are truly federal. Students of the workings and problems of federal institutions find the last-mentioned countries almost as fruitful fields of observation as the United States.<sup>1</sup>

How far the dominions have of late travelled on the road toward complete autonomy will be apparent if we observe their present position with respect to (1) law-making, (2) executive power, (3) judicial appeals, and (4) international relations. As the self-governing colonies developed, the amount of legislation enacted locally naturally increased, while the British Parliament, though legally competent to make any and all laws for any and all parts of the Empire, gradually fell back, so far as the dominions were concerned, upon a policy of legislating on only matters on which the dominions were not themselves competent to legislate or matters of Empire importance, *e.g.*, nationality, which needed to be regulated on a uniform basis. There still are, and will continue to be, a good many laws, made at Westminster, which, in whole or in part, apply in the dominions as in other portions of the British realm. But the circumstances under which such legislation will in future be enacted have of late been profoundly altered. For some time it had been an accepted convention, not only that laws made at Westminster should in no case be regarded as applying to the dominions unless their texts so stipulated, but also that legislation affecting the dominions ought to be passed only after consultation with the various dominion governments. Under terms of the Statute of Westminster, no act of the British Parliament passed after

Dominion  
autonomy:

1. As to leg-  
islation

<sup>1</sup> The monumental work on the dominion governments is A. B. Keith, *Responsible Government in the Dominions*, 2 vols. (2nd ed., Oxford, 1928), but a later treatise, and one more easily used, is the same author's *Constitutional Law of the British Dominions* (London, 1933), Chaps. v-xx. J. Bryce, *Modern Democracies* (New York, 1921), Vol. I, deals illuminatingly with Canada in Chaps. xxxiii-xxxvii and with Australia and New Zealand in Chaps. xlvi-lviii.

the taking effect of that measure is to be construed as extending to any dominion unless the act itself expressly declares that the given dominion "has requested and consented to" the enactment thereof. Furthermore, by the same statute, all dominion parliaments are empowered to repeal or amend any British act (or any rule, order, or regulation made under such act) in so far as it has been part of the law of the dominion. And the Westminster statute itself declared certain existing laws, or parts of laws, thenceforth inapplicable in the dominions generally.

The other side of the matter relates to legislation which the dominions themselves enact; and here the changes under the Statute of Westminster are at least equally significant. Formerly, every bill passed in any dominion had to receive the assent of the crown, given normally through the governor or governor-general in the dominion, under responsibility to the "British government," *i.e.*, the cabinet at London; and measures might be, although they infrequently were, vetoed by that official, acting on his own judgment or under instructions. Bills sometimes, however, were "reserved," *i.e.*, sent to London for final decision—except in the cases of Canada and the Irish Free State. And any bills—except again in the case of the Free State—might be disallowed from that quarter. To be sure, the wishes of the dominion parliaments were, in later times, rarely thwarted in any of these ways. But the power was always there. Nowadays, however, the situation is different in two important respects. In the first place, although in his capacity of representative of the king (no longer of the British "government") the governor-general still formally assents to all dominion legislation, he would no more think of administering a veto than would his counterpart in Buckingham Palace, and the device of reservation has all but disappeared. In the second place, whereas formerly inconsistency of a dominion statute with British common or statutory law was the usual ground for veto or disallowance, under the Statute of Westminster no law or provision of any law made by a dominion parliament after the taking effect of that act was to be held void or inoperative on the ground that it was "repugnant to the law of England, or to the provisions of any existing or future act of Parliament of the United Kingdom, or to any order, rule, or regulation made under any such act"; and this practically put an end to the

theory, to say nothing of the actual use, of disallowance. So far as the making of their own laws is concerned, the dominions are now, therefore, absolutely free. If laws made at Westminster after 1931 are to apply to any one of them, the dominion must have "requested" that they do so; and even at that, it is at all times at liberty to repeal or amend such laws in so far as applicable within its own boundaries. Under these arrangements, considerable diversity of law is likely to arise, entailing problems with which the future will have to deal.

On the executive side, one finds interestingly reflected the dualism resulting in Britain itself from the rise of a responsible cabinet alongside a previously powerful king. Until 1926, the governor-general, while regarded as the personal representative of the sovereign, was an appointee of the British "government," *i.e.*, the cabinet, and chief administrative agent of that authority in the dominion. In accordance with the Balfour Report, however, this official was relegated to a merely nominal headship, precisely analogous to that of the king in the British system; and nowadays he is appointed by the king directly—on the advice of his ministers, to be sure, but the ministers of the *dominion*, not the British ministers. This development left the British cabinet without the customary agent in the dominion through whom to deal. But already it was not unusual for correspondence to pass directly between the British prime minister and the corresponding authority in the dominion, and nowadays this is the procedure—except that on all but the most important matters the channel of communication is rather between the Secretary of State for Dominion Affairs at Whitehall and the respective dominion ministers for external affairs. In addition, the dominions are generally represented by high commissioners in London, and since 1928 British high commissioners have been stationed in some of the dominion capitals. The formal, nominal line of control runs, therefore, from Buckingham Palace by way of the governor-general's mansion in the dominion capital to the dominion cabinet room; the line of actual control—so far as there is control at all—runs, however, from Downing Street straight to the same terminus.

Turning to the domain of justice, one finds the dominions equipped with courts and procedures, which, although strongly reflecting English precedent, are quite independent; dominion

2. As to executive authority

3. As to judicial appeals

judges, too, are almost invariably dominion men. The only external check upon the courts is the judicial committee of the privy council, to which, under varying conditions, appeals may be carried from the highest court of every dominion except perhaps the Irish Free State.<sup>1</sup> It is not surprising that as autonomy grew, dominion sentiment developed in favor of curtailing or entirely eliminating such appeals. The highest dominion courts, it was argued, were entirely capable of exercising final jurisdiction; appeal to London threw powers of final determination into the hands of a body which in principle was English and alien, and likely to be insufficiently conversant with dominion conditions;<sup>2</sup> such appeals, further ran the argument, were expensive, thereby placing poorer litigants at a disadvantage. As early as 1888, Canada sought to cut off appeals in criminal cases, but was not permitted to do so. Australia, in 1900, presented for approval at London a constitution making no provision for appeal, but was required to allow one to be inserted. South Africa's constitution of 1909 started off by forbidding appeals from the decisions of the dominion supreme court, but ended by permitting them from that tribunal's appellate division. The Irish Free State wrote into its constitution a clause denying all right of appeal from the dominion supreme court. The British government insisted upon the substitution of a provision quite to the contrary. As recorded above, however, the Irish parliament in 1933 adopted a proposed constitutional amendment undertaking once more to put an end to such appeals—with consequences still to be determined when these lines were written.

In point of fact, the whole matter is at present in a decidedly chaotic condition. The Balfour Report recommended that some uniform set of regulations be agreed upon, but no progress has

<sup>1</sup> Sometimes in pursuance of recognized right when certain conditions exist (*e.g.*, when values to a given amount are in dispute); sometimes by leave of the dominion court when in its opinion the question involved ought to be submitted to the king in council; sometimes by special permission received from the judicial committee itself. The actual, if not wholly legal, termination of appeals from the supreme court of Ireland is explained below.

<sup>2</sup> The dominions can be, and in fact are, represented in the membership of the judicial committee (until 1928, by a maximum of seven; nowadays without limit, although at present only 10 persons are actually eligible). Few such representatives, however, are in London at any given time, and no salaries are provided for service there.

been made; even the Statute of Westminster goes no farther (though this is significant) than to put in legal form the right of each dominion to choose its own final court of appeal. In Canada, it is legally possible for appeals to be carried to London in all cases; in Australia, South Africa, and the Irish Free State, the right of appeal is restricted in varying degrees by constitutional provisions; and in the case of the Free State, appeals have so frequently been rendered meaningless by nullifying legislation (passed either in anticipation or in consequence of a judgment), or by sheer disregard of their results by the Dublin authorities, that even before the adoption of the amendment mentioned above the judicial committee was refusing to stultify itself by hearing appeals from that quarter at all. Meanwhile, appeals from some of the dominions, particularly Canada, are fairly numerous; and much can be said for continuance of the practice, especially in respect to cases turning on questions affecting religion, language, or race, and on constitutional issues between federal and state governments.<sup>1</sup>

Up to a point, the Empire, including the dominions, is a single state, in both municipal and international law. That point, however, is soon reached, and beyond it the self-governing areas are substantially free and independent nations; the official name for the group is now, as we have seen, British Commonwealth of *Nations*. From this general fact arise several notable features of the dominions' position internationally—a position, be it observed, which is practically the same for all members of the group. In foreign affairs as in defense, said the Imperial Conference of 1926, “the major share of responsibility rests now, and must for some time continue to rest, with His Majesty’s Government in Great Britain.” Even then it was recognized, however, that all of the dominions were engaged to some extent—some to a considerable extent—in the conduct of foreign relations; and in later years their rôle in this respect has been extended appreciably farther. To begin with, as matters now stand, all are free to accredit their own ministers to foreign

4. As to international relations:

a. Sending and receiving ministers

<sup>1</sup> E. C. S. Wade and G. G. Phillips, *Constitutional Law*, 378a–378f; A. B. Keith, *Constitutional Law of the British Dominions*, 265–281, and *Responsible Government in the Dominions* (2nd ed.), II, 1087–1109; N. Bentwich, *The Practice of the Privy Council in Judicial Matters* (2nd ed., London, 1926); H. Hughes, *National Sovereignty and Judicial Autonomy in the British Commonwealth of Nations* (London, 1933).

governments (also to send consuls), and to receive ministers accredited in turn by such governments. The Irish Free State set the pace in 1924 by accrediting an envoy extraordinary and minister plenipotentiary to the United States, receiving on its part a minister from this country. New Zealand (also Newfoundland while yet a dominion) has not as yet chosen to be represented in this way, but the Free State, Canada, Australia, and South Africa have accredited ministers to a considerable number of countries with which their relations are most extensive. In all cases, the envoy from the dominion, accredited by the governor-general, is the ordinary channel of communication on affairs relating solely to his own country, while matters of general imperial concern, or affecting other members of the Commonwealth, continue to be handled by the minister or ambassador of the United Kingdom.

b. Making  
treaties

In the next place, the dominions are empowered to conclude treaties—under certain limitations. Treaties are ordinarily supposed to be made only by sovereign and independent states. As early as 1922, however, Canada not only set up a claim to separate treaty-making authority, but actually concluded a halibut-fisheries treaty with the United States, which, as being of concern only to the two American neighbors, was signed only by a Canadian, and not a British, representative.<sup>1</sup> With this precedent established, the Imperial Conference of 1923 laid down the general principle that treaties, whether commercial or political, might be negotiated, signed, and ratified separately by any dominion government, provided that no other part of the Empire was affected and that any other government in the Empire likely to be interested was consulted. This remains the rule today. In practice, the limitation mentioned usually entails consultation with the authorities in London, if not in one or more of the sister dominions; but it is difficult to accept the dictum of a leading writer on Commonwealth affairs that the “alleged concession” of the treaty right to the dominions is “a mere chimera.”<sup>2</sup>

The fact that a community of British subjects cannot be at peace with a foreign country with which Great Britain is at war,

<sup>1</sup> For the documents, see A. L. Lowell and H. D. Hall, *The British Commonwealth of Nations* (Boston, 1927), 639–645.

<sup>2</sup> A. B. Keith, *Responsible Government in the Dominions* (2nd ed.), II, 1150.

or at war with a country with which Great Britain is at peace, betokens a considerable degree of surviving unity in international affairs. Even here, however, limits are soon reached, because since 1926 it has been expressly conceded that there is both an "active" and a "passive" belligerency, and that while it remains true that when Great Britain is at war all regions under the British flag are at least passively belligerent, a dominion is the sole judge of the nature and extent of its own coöperation—that is, of whether it will be an active belligerent as well. The constitution of the Irish Free State categorically provides that "save in the case of actual invasion, the Free State shall not be committed to actual participation in any war without the consent of its parliament." The distinction between active and passive belligerency is a convenient means of reconciling imperial unity with dominion autonomy—at all events on paper—and one can imagine circumstances, *e.g.*, abstention by Canada from a war between Great Britain and Afghanistan, under which it might be applied in practice without creating ill feeling. In a war of large proportions, however, there could hardly fail to be resentment toward any member of the Commonwealth seeking to remain aloof.

c. Participating in or abstaining from war

To the particularistic arrangements thus outlined must be added the further significant fact that all of the dominions (and, indeed, India as well) have independent membership in the League of Nations. Most of them were represented separately in the Paris Peace Conference of 1919, where, with full assent of the British government, they decided to insist upon League membership in their own right; and though provocative of misgivings in non-British circles, including the United States, their claim could not be denied.<sup>1</sup> Some people saw in the arrangement evidence that the historic British Empire was breaking up, and this impression was strengthened when dominion delegates at Geneva began taking independent and contrary lines of action when they did not happen to be in agreement with the policy of the government at London. Such freedom of action was, however, taken for granted in British and dominion circles, and

d. Membership in the League of Nations

<sup>1</sup> All of the then existing dominions except Newfoundland became original members. The Irish Free State was admitted in 1923. It will be recalled that Greater Britain's six votes in the League Assembly (seven after 1923) was a principal ground on which membership in the League was objected to in the United States.



has indeed been regarded by the well-informed as a source of imperial strength, in the sense, at all events, that any attempt to force all parts of the Commonwealth into a single channel of action would produce protest and dissension out of all proportion to the benefits accruing. Some of the dominions have played prominent rôles at Geneva, both Canada and the Irish Free State having had seats in the League Council.<sup>1</sup>

**The future of  
the Empire**

Seventy-five years ago, as observed above, there was a good deal of doubt among Englishmen as to whether the Empire as it then stood would endure. The loss of the American colonies suggested that as other possessions grew they too would mature and, like ripe fruits, fall from the imperial tree. Perhaps something of the kind is, after all, going to occur. Already the Commonwealth, as described in the foregoing pages, is in essence a league of independent states; two of the dominions, *i.e.*, the Irish Free State and South Africa, in which people of English descent do not predominate in the population, covet still more independence than they have; the inhabitants of one of them, the Free State, sought long and hard to make their independence absolute, and, as recorded above, their government has of late revived the effort in a very determined way.<sup>2</sup> After all, however, there stands at the center a political entity, the United Kingdom—more populous than all the rest combined, itself a great European power and world power, master of a far-flung empire of dependent peoples, prepared to go on bearing practically the entire expense of defending the dominions on the high seas and from external

<sup>1</sup> In addition to references already cited on the international status of the dominions, the following should be noted: A. B. Keith, *Constitutional Law of the British Dominions* (London, 1933), Chaps. iii–iv, xvi; *ibid.*, *The Sovereignty of the British Dominions* (London, 1929); A. J. Toynbee, *The Conduct of British Empire Foreign Relations Since the Peace Settlement* (London, 1928); P. J. N. Baker, *The Present Juridical Status of the British Dominions in International Law* (London, 1929); P. E. Corbett and H. A. Smith, *Canada and World Politics* (London, 1928); and F. H. Soward, "Canada and the League of Nations," *Internat. Conciliation*, No. 283, Oct., 1932.

<sup>2</sup> It is commonly considered that, legally, no dominion has a right to withdraw, or "secede," by its own independent action. In some quarters, however (*e.g.*, by the South African statesman, General Herzog), a contrary view is held; and no one supposes that if any of the group should in future deliberately decide upon withdrawal, the others would go so far as to use armed force to prevent it from doing so. On the general subject, see A. B. Keith, *Constitutional Law of the Dominions*, Chap. iv, and cf. p. 415 above,

attack,<sup>1</sup> affording them facilities for economic connections not easily obtainable elsewhere—and, considerations of prestige and sentiment entirely apart, most of the self-governing peoples would think twice before accepting complete legal independence if it were offered them. Nor is there prospect that any such offer will be made. There are still Little Englanders, just as there are still men who, although devoted to the imperial ideal, can see no escape from the Empire's eventual dissolution. But one will search in vain through the official pronouncements of the three great political parties for proposals or promises looking to the setting adrift of the crown colonies, India, or the dominions. The Labor party—certainly the least “imperialistic” of the three—calls in its program as revamped in 1928 for “the closest coöperation between Great Britain and the dominions,” for the elevation of India to dominion status, and for the preparation of “indigenous peoples for full self-government at the earliest practicable date.” But it nowhere suggests dismantling the Empire. The emphasis all along the line, in all parties and in all sober discussion, is upon ways and means of adjusting the internal and external relations of the Empire, broadly conceived as including the Commonwealth, in better accordance with the new world conditions of the twentieth century, and particularly of the post-war period. As to the dominions, the Statute of Westminster is regarded as marking a long step with others, to be sure, remaining to be taken—in the direction thus marked out. That the Empire will go on is taken for granted.

The fact has been noted that there is no written constitution either for the Empire as a whole or for the Commonwealth. It is doubtful whether there ever will be one. But this does not mean that there is not a great and growing body of imperial constitutional law—to say nothing of imperial conventions or customs as well. How such law and custom develop must be evident from the foregoing pages. Take, for example, the matter of dominion participation in the management of foreign relations. As recently as 1911, Prime Minister Asquith stoutly maintained that the responsibility of the British government in such weighty

Methods of  
constitu-  
tional growth

<sup>1</sup> The Irish Free State has no naval establishment of any kind, while the other dominions have only very small naval forces—reckoned, for purposes of existing naval limitation treaties, as parts of the British naval force. Each dominion, on the other hand, has a military establishment of some importance. See A. B. Keith, *Constitutional Law of the British Dominions*, Chap. xvii.

matters as formulating foreign policy, making treaties, declaring war, concluding peace, and, indeed, in relations of every form with foreign powers, could not be shared. The experiences of the World War led, however, to the adoption of a different attitude. The Imperial War Conference of 1917 pronounced all of these activities of common concern to the Empire, and therefore matters in which action was to be common. The resolution of the Conference to this effect was accepted by the British government as a working principle; whereupon the Imperial Conferences of 1923 and 1926 took the next logical step of working out rules and methods for giving effect to the plan, the government again accepting them and thereby placing upon them the stamp of legal validity. Within the space of a decade, the entire scheme of imperial foreign relations was revolutionized—not by formal act of Parliament, nor yet by unilateral action of the London executive authorities, but by conference, resolution, and informal assent.

In similar fashion have come most other recent changes in inter-imperial relationships, and from the same process must be expected to flow all of the greater understandings and readjustments by which the Empire will continue to preserve the harmony, and also build the machinery, necessary to its survival. Thus the Empire feels its way along the tortuous path of its existence, developing its rules of action as it goes. Its scheme of life at any given moment contains much that is illogical, and even incongruous. But readers of earlier chapters of this book will recognize in the procedure the same practical-minded meeting of problems as they arise which made the living, expanding British constitution what it is today, and will understand that logic and symmetry are—in the Britisher's world, at all events—not essential to serviceableness and durability.<sup>1</sup>

<sup>1</sup> The present character and outlook of the Empire are dealt with from various points of view in A. Zimmermann, *The Third British Empire* (London, 1927); W. P. Hall, *Empire to Commonwealth* (New York, 1928); L. H. Guest, *The New British Empire* (London, 1929); W. Y. Elliott, *The New British Empire* (New York, 1932). A convenient brief survey, with emphasis on legal aspects, is E. C. S. Wade and G. G. Phillips, *Constitutional Law*, Pt. ix, and significant judicial decisions are presented in D. L. Keir and F. H. Lawson, *Cases in Constitutional Law*, Chap. xii. *The Round Table*, a quarterly review published in London since 1911, is indispensable for students of Commonwealth politics.

## 2. FRANCE

### CHAPTER XXI

#### THE RISE OF CONSTITUTIONAL GOVERNMENT

To the present point, our attention has been fixed upon the parent system in a great galaxy of governments operating in the widely scattered English-speaking areas of the earth. If our plans lay in that direction, we could proceed to the consideration of other systems in the group—Canadian, Australian, South African, and, high in the list, the system also of the United States. Without going outside these bounds, we could bring to light an amazing variety of institutions, modes, and processes richly significant for the student of political life and affairs. There is, however, another, and even larger, world in which governments of multifold types are to be observed at work—a non-English-speaking world which, viewed geographically, stretches all the way from Latin America to the Far East, and regarded institutionally, runs the gamut from the stabilized and relatively conventional parliamentary system of the French Republic to the novel and daring régimes of Soviet Russia, Fascist Italy, “Nazi” Germany, and Nationalist China. And though here again we must confine attention to only limited portions of the field, it is to this challenging world that we now turn—a world presenting (along with much that has a familiar appearance) political concepts, mechanisms, and procedures that one will never encounter in countries in which English is the language of the people.

Governments  
in the non-  
English-  
speaking  
world

For a number of reasons, we start with France. Not only was that country the first, apart from England, to assume the characteristics of a modern national state, but it is today one of the nations of foremost rank—one of the few having a claim to the somewhat ethereal title of “world power.” More important, it has set the pace for the political development of all Western and Central Europe, having indeed been outrun in certain phases of twentieth-century democracy by a number of other states, yet

Significance  
of the gov-  
ernment of  
France

holding an unchallengeable position as chief Continental interpreter of the letter and spirit of parliamentary institutions. For many lands, *e.g.*, Italy, Spain, and Belgium, the governmental and legal system now centering in Paris is as truly the parent system as is the English system in relation to the Anglo-American world. Elsewhere—in Switzerland, the Netherlands, and newer states like Czechoslovakia, Poland, Yugoslavia, and Finland—this same system has on many occasions served as a model. Even in lands as dissimilar as Germany, Scotland, Rumania, the Latin American republics, and our own American state of Louisiana, its influence is unmistakable. Furthermore, France is still a parliamentary democracy, and therefore to be bracketed with Great Britain as against the three other countries whose governments are to be treated in this book. In any event, French and English governments bear enough resemblance to each other to be studied most effectively in close conjunction, being sufficiently alike to make comparisons apt and instructive, and yet sufficiently different, not only in their mechanisms but in the traditions behind them and in the spirit and outlook of the peoples who operate them, to make contrasts interesting and sometimes startling. It is with Whitehall and Westminster and boroughs and justices of the peace fresh in mind that one is most likely to grasp the full significance of L'Élysée and Palais Bourbon and prefects and *conseils de préfecture*.

The French Revolution as a force in European political history

Disraeli is reported to have said on one occasion that there are only two events in history—the siege of Troy and the French Revolution. The remark was, of course, only a whimsicality; yet it was true enough in the sense that the political and social upheaval which set eighteenth-century France on the high road to becoming the virile and enlightened Third Republic of today can be left off no list of great historic occurrences, however brief. The Revolution drew a line across French history such as never was drawn athwart the history of Britain—at all events, not after the days of the Norman Conquest. It released impulses which not only turned the political life of all western Continental Europe into new channels, but, despite the protests of Burke and other horrified Englishmen, exerted considerable effect upon English political thinking and practice as well. The waves of its influence have reached the most distant

parts of the earth, and even yet have by no means spent their strength.

Far-reaching, however, as were the Revolution's repercussions, it must not be supposed that it marked a complete break with the past, even in France. There never is anything of that sort in a people's history. Without doubt, the French government of today is to a greater extent a product of what the French regard as the modern era, *i.e.*, since 1789, than is the English. But a good deal has been carried over from earlier times; and on this account, as well as because the old institutions furnish a useful measure of the new, a word is in order about the country's political heritage as it stood before the storm of revolution broke.

To begin with, the government of the Old Régime was an absolute monarchy. Gathering strength in the hands of strong-willed monarchs such as Philip Augustus, Louis IX, and Philip the Fair (French counterparts of William the Conqueror, Henry II, and Edward I in England), the royal power reached its apogee in *le grand monarque*, Louis XIV, in the second half of the seventeenth century—a king who subordinated everything to dynastic interests, who surpassed all contemporary despots in his sense of unbounded and irresponsible dominion, and who went out of his way to show his gratitude to the bishop-courtier Bossuet for writing a book expounding the theory of absolute monarchy by divine right. "We hold our crown from God alone," reads an edict of Louis XV in 1770; "the right to make laws by which our subjects must be conducted and governed belongs to us alone, independently and unshared." Custom had, indeed, given such sanction to certain principles, *e.g.*, those regulating the succession to the throne, that the king himself was supposed to be bound by them; and in point of fact ministers were sometimes really more powerful than the sovereign. The theory of royal supremacy was, however, perfectly clear; and practice, as a rule, did not lag far behind. In an earlier feudal age, government and administration throughout the country were carried on largely by semi-independent lay and ecclesiastical magnates. Long before 1789, however, they had passed into the hands of a numerous, centralized, bureaucratic body of royal officials,<sup>1</sup> directed from Paris by leading members of the king's council—especially the chancellor, the controller-

Government  
under the  
Old Régime

<sup>1</sup> Notably the *intendants* of the *généralités* and their assistants, the *sub-députés*.

general of finances, and the secretaries of state for the royal household, foreign affairs, war, and marine. Members of this close-knit hierarchy, high and low, recognized no responsibility to the people for their acts; and although some tradition of local self-government survived, chiefly in the communes, there was little enough of it in practice.

Lack of a national parliament

Furthermore, there was nothing whatever in the nature of a national parliament. To be sure, an Estates General had come into being—in the very same centuries in which the English Parliament arose. But in the first place, this gathering (unlike the English) had never outgrown the form and character of a typical mediaeval assemblage, organized on the basis of distinct and rival “estates,” or orders. It sat and deliberated in three separate bodies, or chambers, one representing the nobility, one the clergy, and a third the *tiers état*, “third estate,” or bourgeois middle class. The first two estates could usually agree on proposals submitted to them, and of course could always outvote the *tiers état*. In the second place, whereas the English Parliament now met every year, the Estates General had from the first been convened at extremely irregular intervals, which grew gradually longer, until after 1614 it was summoned no more at all until financial necessity forced the government’s hand in 1789. Finally, the assembly never became anything more than a body of men who, in relation to their constituents, were merely instructed agents, and in relation to the king, were more or less deferential petitioners, with no general, independent powers, either fiscal or legislative. Regional “estates” survived in Burgundy, Brittany, Languedoc, and a few other provinces; but they had little initiative or vitality.

A régime of privilege

In addition, the entire political system was shot through with inequality and privilege. So arbitrary and capricious was the government, De Tocqueville tells us, that it not only “incessantly changed particular regulations or particular laws,” but even at any given time was unable or unwilling to apply the laws uniformly and impartially to all of the people. There were no reliable guarantees of personal freedom; under a *lettre de cachet*, or “sealed letter,” any one might be arrested summarily and held in prison until it suited the convenience of the authorities to inquire into the merits of his case. In return for a small collective *don gratuit* (which sometimes was not actually paid), the clergy

as a class was exempt from taxation. The nobles had indeed lost their local political power and administrative functions; but they paid only such nominal taxes as they bargained with the officials to pay; and both they and the clergy enjoyed many additional privileges, including a monopoly of high national offices and honors and the feudal, customary right of exploiting the peasantry—even that considerable portion of it which owned the soil that it tilled.<sup>1</sup>

The government of the Bourbon kings was thus autocratic, wasteful, corrupt, and burdensome; and in 1789 a tide of protest which had long been rising swept over the head of the luckless Louis XVI and engulfed the entire political and social structure on which the monarchy rested. This protest first turned into action, naturally, at the hands of people who had suffered most from the government's shortcomings—especially the intelligent, ambitious, and well-to-do *bourgeoisie*, who later supplied most of the constructive statesmanship of the Revolution. It found most lucid and forceful expression, however, in the writings of a remarkable group of critics, essayists, dramatists, and novelists, commonly referred to as the *philosophes*. Beginning with the light satire of Montesquieu's *Persian Letters* (1721), a running fire of literary and philosophic discussion of the existing order of things—in government, law, the church, education, economic organization, and practically everything else—advanced by stages to the bold and bitter sarcasm of Voltaire in his famous *Philosophic Dictionary* (1764) and his *Essay on Republican Ideas* (1765). Criticism of this sort is sometimes merely destructive. In the present instance, however, it was not so. Many of the philosophers looked eagerly and hopefully to a general reconstruction of the social order—government included—on principles of reason and justice.

On political lines, the new thought naturally showed a good deal of diversity. Voltaire, aristocrat by birth and temperament

The philosophers and their criticism of the existing order

Their political ideas

<sup>1</sup> The political condition of France in the eighteenth century is described succinctly in C. D. Hazen, *The French Revolution* (New York, 1932), I, Chap. iii, and more fully in E. J. Lowell, *The Eve of the French Revolution* (Boston, 1892), Chaps. i, ii, viii. Notable books by French authors dealing with the general state of the country, including government, are A. de Tocqueville, *L'Ancien régime* (Paris, 1850), trans. by H. Reeve under the title *State of Society in France before the Revolution of 1789 and the Causes which led to that Event* (new ed., Oxford, 1894), and H. A. Taine, *Les origines de la France contemporaine: L'Ancien régime* (Paris, 1876), trans. by I. Durand as *The Ancient Régime* (New York, 1876).



and indifferent to the claims of democracy, favored continuing the absolute power of the king, insisting only that it be used to bring about social and economic reforms and to keep public affairs on a rational basis. Montesquieu, believing that the merit of the English system of government arose from a division of powers among substantially independent executive, legislative, and judicial authorities, and failing to perceive that a growing cabinet system was making for somewhat the opposite situation, disapproved of absolutism and argued for a separation of powers, even though he thought that in a large country like France the monarchy ought to be decidedly strong.<sup>1</sup> The more plebeian and radical-minded Rousseau, starting with the concept of a primeval state of nature in which men led a care-free, non-social existence, and assuming that government was originally created by voluntary contract, developed the doctrine that sovereignty resides only in the body politic, that law is the expression of the public will, that government is established by the sovereign people as its agent to execute the law, that the ideal state would be one in which all functions of government were discharged by the people acting directly, and that where, as in large states, some scheme of delegation of authority becomes necessary, the basis of representation should be men considered as individuals, not classes or interests as in France and other Continental states, and, for that matter, largely in England too.<sup>2</sup>

Influence  
from  
England

The writings of the philosophers were important rather as giving expression to what great numbers of French people were thinking and feeling than as propounding views that were original or novel. Every cardinal doctrine—limited monarchy, separation of powers, and even popular sovereignty—had been voiced by political thinkers now and again from Aristotle onwards. The more direct and immediate source of the French eighteenth-century political philosophy was, however, England. Montesquieu considered that that country had solved the problem of political liberty, and he expounded the separation of executive, legislative, and judicial powers with a view to influencing reconstruction in France on similar lines. Voltaire lived in England three years, and in his writings continually referred admiringly to English life and institutions. Montesquieu, Rousseau, and

<sup>1</sup> *De l'esprit de lois* ("The Spirit of Laws"), published at Geneva in 1748.

<sup>2</sup> *Le contrat social* ("The Social Contract"), published at Amsterdam in 1762.

in fact every French writer who dealt extensively or systematically with political matters, drew heavily upon John Locke, the second of whose *Two Treatises of Government*, published in 1690, embodied the most systematic and convincing defense of the English Revolution—and therefore of the English constitution in its modern, liberalized form—ever made. The social contract, government with limited authority, separation of powers, popular sovereignty, the right of resistance to tyranny, inalienable individual rights of life, liberty, and property—all these are in Locke; and all were taken over, amplified, and adapted by the French writers.<sup>1</sup>

Two currents of liberalism, one French and the other English, thus flowed together in the second half of the eighteenth century, and the ever-swelling stream beat upon the retaining walls of tradition, privilege, and absolutism until at length they could withstand the pressure no longer. They might still have held out a good while had not the country fallen into a financial condition which drove the king to convoke the Estates General, after a hundred and seventy-five years of somnolence. As it was, the coming together of that body loosed the forces of discontent, and events moved straight, by nobody's planning, toward the goal of revolution. Within a few short months, the Old Régime was a thing of the past and a new order had risen—not, of course, new in every respect, but sufficiently different from the previous state of things to mark the beginning, as we have said, of a new age. No revolution of which history tells ever produced a sharper break with the past, save only one, *i.e.*, the Bolshevik upheaval in Russia in 1917; and even that cataclysm would be of comparable importance only if the ideas dominating it were to sweep the European world as did the French concepts of political liberalism.

Revolution  
precipitated

It will help clarify the background of French government today if we call to mind some of the Revolution's contributions

<sup>1</sup> The political theory underlying the American Revolution was also derived mainly from Locke and other English liberals. It was confirmed and strengthened by French influences, but it was mainly of English origin. See C. E. Merriam, *History of American Political Theories* (New York, 1903), 88-95.

French political thought in the half-century preceding the Revolution is outlined in R. G. Gettell, *History of Political Thought* (New York, 1924), Chaps. xv-xviii, and more fully in W. A. Dunning, *Political Theories from Luther to Montesquieu* (New York, 1913), Chap. xii, and *Political Theories from Rousseau to Spencer* (New York, 1920), Chap. i.

Political contributions of the Revolution:

1. General principles of liberty

2. A bill of rights

3. Written constitutions

to the national stock of political ideas and experiences. The first was a body of general principles, drawn largely from Rousseau, and set forth with remarkable lucidity and force in the first part of the "Declaration of the Rights of Man and of the Citizen," adopted by the National Assembly on August 26, 1789. Men, it was solemnly affirmed, are born free and remain free and equal in rights; the aim of all political association is the preservation of the natural and imprescriptible rights of man, namely, liberty, property, security, and resistance to oppression; sovereignty resides in the nation, and no body or individual may properly wield any authority that does not proceed directly from the nation; liberty consists in freedom to do whatever injures no one else; law is the expression of the public will, and every person has a right to participate, personally or through his representative, in making it; law must be the same for all, whether it protects or punishes.<sup>1</sup> A second, and closely related, contribution was a comprehensive restatement of what were conceived to be the "natural and inalienable" rights of each and every citizen. The fullest and weightiest enumeration of these rights is found in the foregoing Declaration of Rights, where the points specially stressed are freedom from arrest or imprisonment except according to the forms prescribed by law; freedom of religious belief; freedom of speech; freedom of writing and of the press; participation (personally or through a representative) in the voting of all taxes; and immunity of property from confiscation except under legally ascertained public necessity, and after suitable compensation.

A third contribution was the device of a written constitution. Until late in the eighteenth century, fundamental, or as we should now say constitutional, law commonly rested almost entirely—as ordinary law also very largely did—upon custom, and hence rarely found its way into writing. True, the parliamentarians who defeated Charles I in arms and abolished the

<sup>1</sup> This Declaration, framed in response to popular demand as voiced in the *cahiers*, was eventually incorporated in the constitution of 1791. The text, in English translation, is printed in F. M. Anderson, *Constitutions and Other Select Documents Illustrative of the History of France, 1789-1907* (2nd ed., Minneapolis, 1908), 59-61. See J. H. Robinson, "The French Declaration of the Rights of Man," *Polit. Sci. Quar.*, Dec., 1899, and G. Jellinek, *Die Erklärung der Menschen- und Bürgerrechte* (2nd ed., Leipzig, 1904), trans. by M. Farrand under the title of *The Declaration of the Rights of Man and of the Citizen* (New York, 1901).

monarchy in England in a somewhat earlier period hit upon the notion of a written constitution; and two such instruments were actually put into operation, one in 1653 and the other in 1657.<sup>1</sup> This effort, however, was sporadic; and, as we have seen, the historic English constitution has never to this day, as a whole, been reduced to written form. Nevertheless, outside of England, eighteenth-century political thinkers and leaders very generally turned to the plan of a written constitution, so constructed as to embody in a systematic way the fundamental principles, forms, and restrictions under which a particular government was to be carried on. The idea commended itself in a special degree to the French reformers, partly because they were becoming convinced of the general superiority of written over customary law; partly because they looked upon the promulgation of a written constitution, newly decreed by the sovereign nation, as in effect a renewal of the social contract, then commonly regarded as having been the origin of all government; and partly because they considered that a written constitution was a very desirable means of acquainting the people with their rights and inspiring attachment to them. There was the added influence of the example of America, where, within the space of hardly more than a decade, two national constitutions and more than a dozen state constitutions had been put into operation by direct or indirect authority of the people.

In accordance with a very general demand in the *cahiers*, the National Assembly set about the construction of a written constitution in 1789. The document to which was prefixed the Declaration of Rights as previously promulgated—was not completed until 1791. But from that time onwards, France, notwithstanding her numerous political shifts and turns, has lived continuously (except for brief transitional intervals) under a written constitution. She, furthermore, became—so far as Continental Europe is concerned—the mother of written constitutions. During two decades of conquest and expansion, she covered all Western Europe south of the Baltic with constitutions which she had herself made, or which at all events were modelled on one or another of her own fast-appearing fundamental laws; and by the time when her power receded to its earlier limits, the idea had been indelibly impressed upon the liberal elements

<sup>1</sup> See p. 30 above.

in Germany, Italy, Spain, and elsewhere that a prime requisite of popular freedom is written organic law.<sup>1</sup>

#### 4. Republicanism

A fourth important contribution of the Revolution was the conception of republicanism as a practicable form of government for France, and hence, by implication, for other large and venerable European states. The relative merits of republican and monarchical political systems had been a subject of discussion from Plato and Aristotle onwards, and notable experiments with republican government had been made by the early Greek cities, by pre-imperial Rome, by the Italian city states of the Middle Ages, by the Dutch provinces, by Switzerland, by England at the middle of the seventeenth century, and, more recently, by the United States of America. As a group, the eighteenth-century philosophers favored monarchy. Montesquieu conceded that no single form of government is best under all conditions, but held that a republic presupposes not only a small territory but a high level of public virtue and an absence of luxury and large fortunes. Rousseau believed democracy workable only in small and poor states. Voltaire, too, thought of republicanism only in terms of Greek city states and Swiss cantons, and said that the regeneration of France must come from enlightened and benevolent kingship. Turgot considered all so-called republics of the past to have been only vicious aristocracies in disguise, and argued that monarchy is best adapted to promote the general happiness of mankind.

The establishment of the American republic roused keen interest in France, but it did not turn the current of political reform into republican channels. The *cahiers* of 1789 voiced no demand for a republic. The National Assembly was thoroughly monarchist, and the constitution which it promulgated in 1791 provided for a continuance of monarchy, even though tempered and liberalized. The trend of events, however, presently set a good many people to thinking about a republic. By the end of 1790 there was a lively and influential republican party; by midsummer of 1791 the radical elements were turning *en masse* to the new doctrine; and although the Legislative Assem-

<sup>1</sup> On written constitutions in general, see pp. 40-41 above; also W. A. Dunning, *Political Theories from Rousseau to Spencer*, 248-291. The subject is considered in relation to France in A. Esmein, *Éléments de droit constitutionnel* (8th ed., Paris, 1927), I, 603-648.

bly, which practically governed France during the brief life of the constitution of 1791, remained predominantly monarchist, the whole course of its policy was such as to make the ultimate displacement of kingship a certainty. In September, 1792, the newly chosen Convention, convinced that no other course was feasible, unanimously decreed the abolition of monarchy and the establishment of a democratic, unitary republic. During the next few years the republican gospel was carried by French armies and reformers into all of the surrounding countries, and new or reconstructed republics sprang up on every hand; and although these creations mostly perished, and the parent republic itself gave way before the imperial aspirations of Napoleon, republicanism as a creed and a program took a place in European political life which it had never held before.<sup>1</sup>

Another thing that the Revolution did was to bring the theory of popular sovereignty into more general and practical acceptance than in the past. Like republicanism, popular sovereignty— the conception of all legislative, executive, administrative, and judicial activities of the state as properly springing from and animated by the will of the general body politic— was not a new idea. It can be found in Aristotle; it was the ultimate theory not only of the Roman Republic, but of the Empire as well; it was voiced in the fourteenth and fifteenth centuries by able writers like Marsiglio of Padua and Nicholas of Cusa; and shortly before the Revolution it received its classic expression in France at the hand of Rousseau. But after 1789 it found more literal and fruitful application in France than anywhere else in Europe up to that time. The old representation of orders in the Estates General was replaced by representation of the nation as such, and as a whole. The entire population was consolidated into one body politic; and the deputy sent up to Paris, once having been elected by his constituents, was conceived of no longer as a mere agent and spokesman of a class or interest, but as a representative of an integrally sovereign nation, composed of people who were not only separate political entities, but also political equals. Representative government was for

5. The doctrine of popular sovereignty

<sup>1</sup> H. A. L. Fisher, *The Republican Tradition in Europe* (New York, 1911), Chap. iv. The fullest and best account of the growth of republicanism during the French Revolution will be found in F. A. Aulard, *Histoire politique de la révolution française* (Paris, 1901), trans. by B. Miall under the title of *The French Revolution; A Political History* (London, 1910), II, Chaps. ii-iv.

the first time put upon the basis with which the world today commonly associates it.<sup>1</sup>

6. The theory of separation of powers

Finally, the Revolution gave new meaning and scope to another time-honored theory, *i.e.*, the separation of powers. More or less separation of powers had, of course, actually existed in various earlier European governmental systems; and in America, both a national government and a dozen state governments had been organized with scrupulous regard—too much regard, as we today are aware—for this principle. Now for the first time in Europe, however, there was a deliberate attempt to build up governments resting upon separation, and upon the companion principle of checks and balances which Montesquieu likewise had elucidated and endorsed. Legislative, executive, and judicial functions were looked upon as fundamentally dissimilar, and as likely to be performed most satisfactorily if entrusted to different hands. Even the monarchist constitution of 1791 showed the influence of this idea; and every later fundamental law, whether French or merely influenced by France, was phrased more or less consistently in accordance with it.

Political instability, 1789-1875

Having severed her most obvious political ties with the past, France in 1789 entered upon what proved a very prolonged period of readjustment and experiment. More than three-quarters of a century were required to bring the ship of state out of the tempestuous waters of the Napoleonic, Restoration, Orleanist, and Second Empire régimes into the haven of the Third Republic; and, as we shall see, even this haven was none too secure during the first twenty years or more of the present republic's history. Between 1789 and 1875, one form of government after another was tried, but always with unsatisfactory results; of six different written constitutions put into operation, not one lasted more than eighteen years.<sup>2</sup> To be sure, political arrangements in the local areas throughout the country were not uprooted every time that there was a change of constitutions at Paris. On the contrary, the new governmental and adminis-

<sup>1</sup> See C. A. Beard, *The Economic Basis of Politics* (New York, 1923), Chap. iii.

<sup>2</sup> The texts of all French constitutions (with other fundamental laws) since 1789 are brought together conveniently in L. Duguit et H. Monnier, *Les constitutions et les principales lois politiques de la France depuis 1789* (5th ed. continued by R. Bonnard, Paris, 1931). English translations are presented in F. M. Anderson, *Constitutions and Other Select Documents Illustrative of the History of France, 1789-1907*, already cited.

trative institutions which department and commune received at the hands of the Revolutionary assemblies, and of Napoleon, underwent a steady and orderly development throughout the entire period. But the history of national government in these decades is a remarkable story of stops and starts, of swings backward and lurches forward, which gave the Englishman—forgetting how long France had lived under a single plan of government and how unstable his own political situation had been in the seventeenth century—a chance to wag his head and remark dolefully (or was it sometimes exultantly?) upon the Frenchman's lack of capacity in political matters.<sup>1</sup>

"Nearly all of the forms of government which have succeeded each other in France," remarks a French writer, "have left behind them, as it were, certain fertile alluvial deposits";<sup>2</sup> and while it is not feasible to describe these successive plans or schemes in detail, a running outline of them will help us see how the present republican order fits into the general picture.

Constitution-making during the Revolution began, as we have observed, with the drafting of the fundamental law prefaced by the Declaration of Rights of 1789 and put into operation in 1791. The authors of this document were moderate reformers, who wrote into it provisions for a limited monarchy, with ministers subject to impeachment, and with a unicameral parliament indirectly elected for two years in the newly created departments, by male citizens 25 years of age and upwards who paid direct taxes equal to the value of three days' labor. The system thus provided for did not last long. It was by no means democratic enough for leaders like Robespierre and Danton who were now coming into control; besides, the situation was soon ripe for a republic. In 1793, a much more radical constitution was drawn up to supplant it, providing not only for a republic but for direct elections, manhood suffrage, primary assemblies of citizens to consider proposed laws, and a plural national

The constitutions of 1791, 1793, and 1795

<sup>1</sup> "A very droll spectacle," said Montesquieu, "it was in the last century to behold the impotent efforts of the English towards the establishment of democracy. . . . The government was continually changing. . . . At length, when the country had undergone the most violent shocks they were obliged to have recourse to the very government which they had so wantonly proscribed." F. W. Coker, *Readings in Political Philosophy* (New York, 1914), 456.

<sup>2</sup> J. Barthélemy, *The Government of France*, trans. by J. B. Morris (New York, 1925), 15.



executive consisting of a committee of 24 members. This became the first constitution outside of America to be submitted to a popular vote; and it was adopted. Before it could be put into effect, however, the political situation changed again; and when France once more found herself governed under a written fundamental law, that law was a new and more conservative constitution drafted in 1795, and also adopted by popular vote, after the Terror had passed and the radicals had lost control.

The Napoleonic dictatorship

This "constitution of the Year III" had considerable merit, and might have been expected to last—especially as the Revolution was now over, the republican régime was becoming stabilized, and the new government was able to start off with a good deal of vigor. In four short years, however, it went the way of the others, primarily because the country's foreign wars brought to the front a national leader who had no use for popular constitutions, and who coveted an amplitude of power that the existing instrument would not have allowed. Having made himself dictator by a *coup d'état* of 1799, "Citizen Bonaparte" proceeded to give his adopted land a frame of government more to his liking. Two drafting commissions were employed, and various features were taken over from the political writings of the contemporary statesman Siéyès; but the ideas behind the new scheme were those of the young Corsican.

Napoleon's contributions to French government

One of these ideas was that if there was to be a written constitution, it should be brief and general, leaving plenty of elbow-room for the public authorities; and hence the constitution of 1799, besides being less than a quarter as long as that of 1795, was conveniently vague, or even silent, on many vital topics. Another thought was that the powers of the legislature should be reduced sharply and those of the executive correspondingly increased; and the new plan, if not deliberately framed with a view to single-handed rule, took such form as certainly to make that sort of rule easily possible. All executive power was entrusted to three consuls, elected by the Senate for ten years; the First Consul was given the real power, his colleagues having only a "consultative voice"; and Napoleon saw to it that he was himself named in the instrument as First Consul. As for the bicameral parliament set up in 1795, its functions were thenceforth divided among four different bodies—a Council of State to prepare measures, a Tribune to give them preliminary con-

sideration, a Legislative Body to vote on them, and a Senate to pass on their constitutionality. This seemed a beautiful balancing of functions. But it worked out—as it was intended to do—so as not to interfere with an almost unrestricted control of public affairs by the First Consul. To all intents and purposes, France had again become a monarchy. The veil was partially withdrawn in 1802 when Napoleon was made First Consul for life; it was torn away completely two years later when he assumed the title of emperor. The fact that this last move was submitted to a popular vote, and cheerfully endorsed, shows not only that the Corsican was master of the situation, but that the French people were not as yet truly converted to republicanism. In point of fact, two more generations of arduous political experience were required to bring the nation to the point of giving republican government reasonably united and dependable support.

The foundation of French institutions today, writes a French scholar already quoted, is provided by the social, legal, judicial, and administrative system of the Napoleonic Empire.<sup>1</sup> Gathering more and more power into his own hands, first as consul and later as emperor, Napoleon used it not only in carrying on wars and managing foreign relations, but in reorganizing local government and administration, codifying and nationalizing the law, reorganizing the relations of church and state, and in still other ways putting the French house in order—so successfully, indeed, that in many important matters, *e.g.*, the law codes, no very great changes have proved necessary at any later time. Undoubtedly it is Napoleon the warrior that holds the highest place in French sentiment and legend; but it is Napoleon the statesman whose handiwork, less dramatic but more enduring, is mainly to be seen by the visitor to France today. In only one respect were the political arrangements devised by Napoleon out of line with the best thought and achievement of later times: in all branches of the government, they rigidly restricted or entirely eliminated the element of popular control. It remained for various later political régimes to infuse the breath of democracy into the institutions which he had created, until finally the Third Republic crowned them with the present machinery of parliamentary government.

<sup>1</sup> J. Barthélemy, *The Government of France*, 15.

Government  
under the  
restored  
Bourbons  
(1814-30)

Driven by military reverses, Napoleon abdicated in 1814; and by agreement of the victorious allied powers, the Bourbons were restored to the throne in the person of Louis XVIII. Naturally, the nations that had striven so long to break the rule of the Man of Destiny had no mind to see his style of government perpetuated, and Louis was pledged in advance to a limited constitutional monarchy patterned somewhat closely on that of England. Local government, the law codes, and much besides, went on practically unaffected; but the national government took a fresh start.

We now encounter a most instructive illustration of how difficult it is to transplant a body of political institutions to an alien soil—how difficult, at all events, to make such institutions take root and thrive. The new French "Constitutional Charter" endowed the king with large powers of ordinance-making, appointment, treaty-making, and declaring war. But ministers were provided for, and were not only to be subject to impeachment but also to be "responsible," presumably in the English sense. No tax might be levied and no law made without the assent of Parliament, once again consisting of two coördinate houses. To be sure, the crown held the sole right to initiate legislative measures, and the chambers could merely petition that a bill on a given subject be submitted. To be sure, also, the electoral laws confined the suffrage to propertied men 30 years of age. Nevertheless, the plan was decidedly more liberal than any in effect under Napoleon.

The Orleans-  
ist régime  
(1830-48)

The new system may possibly not have been too advanced for the French people, but it was far in the van of Bourbon ideas. Louis XVIII never really understood or accepted it; and his brother, Charles X, who succeeded him in 1824, came into fatal collision with it. Trying to keep in office a ministry that did not have the confidence of the Chamber, and seeking to break the resulting parliamentary deadlock by measures plainly in violation of the constitution, Charles brought upon himself the revolution of 1830, and lost his throne. There still was little republican sentiment in the country, and the situation was patched up by crowning the easy-going and democratic Louis Philippe, of the House of Orleans, as king. The occasion was seized, however, to revise the Charter so as to remove the implication that it was simply a grant from the king—an act of royal grace—and to

liberalize the government in sundry ways, chiefly by giving both branches of Parliament the right to initiate legislation.

Still matters failed to go well. Somehow the parliamentary system would not work as it worked on the other side of the Channel. The trouble was, of course, that instead of two great parties, each able, upon the defeat of the other, to command a definite parliamentary majority and to assume undivided responsibility for running the government, France had a *mélange* of party or factional groups, no one of which could boast, or at all events could long retain, control of the Chamber. Ministries rose and fell in swift succession; the energies of even the best statesmen were consumed in futile bickering; government was uninspiring; times were drab; the country seemed to be merely drifting. For eighteen years, things went from bad to worse, the nation all the while growing more discontented; and in 1848 a new revolution, engineered partly by men who were interested in reviving a republican form of government, and partly by others who were thinking chiefly about ushering in a socialistic order, toppled the unimpressive Orleanist régime into the dust.

Once more France became a republic, and this time with a constitution showing unmistakable influence from America. The document, as prepared and adopted by a popularly elected national assembly, not only declared the people sovereign, but pronounced a separation of powers the first requisite of free government. For a legislature, it was decided to go back to the plan of a single large chamber, elected by something approaching manhood suffrage. But, carrying out the idea of separation, executive authority was entrusted to a president of the Republic, chosen directly by the people, by secret ballot, for a term of four years, and rééligible only after an interval of equal length.<sup>1</sup> Powers conferred upon the president were quite comparable with those of the president of the United States; and while ministers were provided for, their status was left so vague that no one could tell whether or not they were to be regarded as responsible to Parliament after the manner of a true cabinet government.

<sup>1</sup> If at any election no candidate received an absolute majority of all votes cast in France and Algeria, and at the same time a total of two million votes, the president was to be chosen by the National Assembly from the five candidates who had polled the largest votes. Compare the provision for election of the president of the United States—in the event of the failure of any candidate to receive a majority in the electoral college—by the House of Representative.

Certainly the tendency was to swing away from the English cabinet system, so unmistakably envisaged in the Charter of 1814, in the direction of the presidential system prevailing in the United States. The nation might not want a king; but it must have a strong executive—one who would supply the active leadership in which kings often fail.<sup>1</sup>

From Second  
Republic to  
Second Em-  
pire

Events soon showed that France was not so fully committed to republicanism as had been supposed. The first test came on the election of a president. Unfortunately there was, among the active leaders, no outstanding person to whom the nation could instinctively turn, as Americans turned to Washington in 1788 or as Frenchmen themselves turned to Thiers in 1871. The situation was one in which the unexpected could easily happen; and what actually did happen was that Louis Napoleon, ambitious and crafty nephew of Napoleon I, dramatically returned to the country from England, got himself elected to the National Assembly, announced his candidacy for the presidency, and wound up by being chosen to the office by an overwhelming majority. Of course even a Bonaparte might conceivably have contented himself with the very considerable prestige and power that went with the new dignity. But this particular member of the family had no mind to do so. He did not want to retire to private life at the end of a petty four-year term; more than this, he coveted the glory of an imperial title.

There were evidences that the people, too, were not much attached to the new order. When, indeed, the first parliament was elected, two-thirds of its members turned out to be avowed monarchists. It was not, therefore, difficult for the president to maneuver the situation in his own interest; and when, after three years— the end of the constitutional term being in sight — a *coup d'état* gave the country a revised constitution extending the term to ten years, there was little protest. Thenceforth, all was plain sailing; though still nominally existent, the Republic was really dead. Near the end of 1852 all disguises were thrown off. A *senatus-consultum* decreed the reëstablishment of the Napoleonic empire, and the people, asked to approve what had

<sup>1</sup> The Revolution of 1848 and the government of the Second Republic are dealt with in H. A. L. Fisher, *Republican Tradition in Europe*, Chap. viii; J. S. Penman, *The Irresistible Movement of Democracy*, Bk. ii, Chap. ix; E. N. Curtis, *The French Assembly of 1848 and American Constitutional Doctrine* (New York, 1918); and A. R. Calman, *Ledru-Rollin and the Second French Republic* (New York, 1922).

been done, responded favorably by a vote of forty to one. The plebiscite was a favorite device of both the first and the second Napoleon; but it is significant that no proposal ever submitted by either ruler failed to receive the desired endorsement. Much clever manipulation was, of course, practiced. At all events, on December 2, 1852—anniversary of the battle of Austerlitz, and therefore a red-letter day in Bonapartist annals—Napoleon III was proclaimed emperor of the French.<sup>1</sup>

The political system of the Second Empire was not lacking in the forms of democracy. Thus there continued to be a one-house *Corps Législatif*, or parliament, elected by direct manhood suffrage. The powers allowed this body were, however, meager, and the stage was purposely set to keep it in the background. An aristocratic Senate—in no true sense an upper chamber—was made the interpreter and guardian of the constitution; and the emperor was endowed, not only with full control of the administration, sole direction of foreign affairs, and unrestricted command of the army and navy, but with power to declare war and conclude peace, and—what was even more important—sole power to propose the measures to be acted on by the Legislative Body. Furthermore, every trace of the cabinet system was obliterated by making the ministers responsible only to the emperor, who, of course, selected them with a free hand. The result was a highly centralized government in which Napoleon III wielded hardly less despotic power than had his uncle half a century earlier. Even such restraints as might otherwise have been imposed by an elected parliament were fended off by deft manipulation from Paris at election time, designed to ensure the victory of "government" candidates.

Government  
under the  
Second Em-  
pire

For a decade, things went reasonably well. The country was once more prosperous; advanced social and industrial legislation held discontent in check; the people were dazzled by the magnificence of the court, and their pride was stirred by public improvements which drew the envious attention of all Europe. In

Criticisms  
and reforms

<sup>1</sup> "Napoleon II" was assigned as a posthumous title to the young king of Rome, only son of Napoleon I. The collapse of the Second Republic is to be attributed in considerable measure to the fact that political liberalism was tied up with radical ideas on the reorganization of society inspired by the industrial revolution, now in full swing in France. The bourgeois and the thrifty looked upon Napoleon III as a protector against the monster of socialism, much as corresponding elements in Italy later looked to Mussolini as a bulwark against bolshevism.

time, however, the régime began to pall. Lavish expenditures meant increasingly burdensome taxes; the government's free-trade policy offended the manufacturers; its wars on Catholic states alienated religious sentiment; its insistence upon controlling local affairs down to the last detail defied every instinct of self-government; the atmosphere which it radiated was stifling, its attitude was often palpably insincere, and it was itself in many ways a sham.

Napoleon III was not the paragon of wisdom H. G. Wells has painted him, but he was no fool, and he tried hard to stay the tide of unfavorable opinion. Beginning in 1860, one concession after another strengthened the position of the *Corps Législatif* and advanced the revival of true parliamentary institutions. Liberty of press and assembly, long practically extinct, was gradually revived. In 1869, the meetings of the Senate were thrown open to the public and the Legislative Body was authorized to elect its own officers. In 1870, even more significant steps were taken, when the Senate, hitherto hardly more than an imperial council, was erected into a legislative chamber coördinate with the Legislative Body (giving France a bicameral parliament again for the first time since 1848) and, in addition, both houses were allowed the right to initiate legislation. Furthermore, the ministers were made responsible to the chambers instead of to the emperor; and the power to amend the constitution was changed so as to require, in every case, a favorable vote by the people.

On paper, at all events, the autocratic régime of the second Napoleon was rapidly giving way to a political system comparable with the English—a system, indeed, destined to be realized in France itself in years that lay no great distance ahead. Whether, under different circumstances, the changes could have saved the waning imperial order is uncertain. Assuredly they had not yet gone far enough to satisfy large numbers of reformers, many of whom, like the orator and parliamentarian Gambetta, had become ardent republicans. Certainly, too, Napoleon III was ill-fitted for the rôle of a constitutional monarch. But, as it was, the concessions—or most of them—came too late to be tested. Hardly were they made before the storm of war broke upon the country; and within a few short months the emperor, who had entered upon the conflict with incredible lighthearted-

ness, was, along with the greater part of his army, a prisoner in German hands at Sedan.<sup>1</sup>

<sup>1</sup> The most thorough treatment of the constitutional changes of the period 1860-70 is H. Berton, *L'évolution constitutionnelle du second empire* (Paris, 1900). H. A. L. Fisher, *Bonapartism* (Oxford, 1908), is an illuminating study. The history of the last ten years of Napoleon III's reign is related at length in the monumental apology of Émile Ollivier, *L'empire libéral*, 17 vols. (Paris, 1895-1914), which is reviewed admirably in H. Fisher, *Studies in History and Politics* (Oxford, 1920), Chap. iii.



## CHAPTER XXII

### THE CONSTITUTION OF THE THIRD REPUBLIC

The provi-  
sional gov-  
ernment of  
1870

When Paris heard what had happened on the Meuse, the Second Empire forthwith collapsed. For a decade, it had lived principally on appearances; and when these failed, it could not go on. The Napoleonic name was destined to stir French hearts on many later occasions, and the Napoleonic legend remained a matter which no student of French politics to this day can entirely ignore. But as for Napoleon III, he simply passed out of the picture, his reputation shattered. Meanwhile, at the capital it fell to a little self-appointed group of parliamentarians of the Left, led by Gambetta and Favre, and already on record as desiring a republic, to take steps to remedy what Thiers aptly termed a "vacancy of power." Somebody must do something; and the previous leadership of these persons in the republican cause marked them out to assume the responsibility. From the Hotel de Ville, two days after Sedan, they proclaimed a republic; and as speedily as possible a "provisional government of national defense" was constructed, charged with carrying on the business of state and pushing the war to a successful conclusion.<sup>1</sup>

The National  
Assembly  
(1871)

On the military side, the task proved impossible. Following up the advantage gained at Sedan, the Germans pressed toward the heart of the country, encircled Paris, and, laying siege to the place, forced a surrender in January, 1871. In this new emergency there was nothing to do but ask for an armistice, to give the nation a chance to elect an assembly empowered to speak for it in deciding to go on with the war or in agreeing to terms of peace; and on February 8, the desired intermission having been obtained, the elections took place throughout France and the

<sup>1</sup> Compare the collapse of the German imperial government in November, 1918--also as a result of defeat in war, combined with popular dissatisfaction which eleventh-hour reforms failed to allay. In Germany, as in France, responsibility for the control of affairs devolved upon a hastily constructed provisional government, with the difference that at Berlin the expiring government officially passed on the torch of power to the new one. See p. 668 below.

colonies. Time was short, and the liberal electoral arrangements of the Second Republic were revived *in toto* for the occasion.

Paris being in enemy hands, the new body met at Bordeaux. Its position was from the first extraordinary. The old imperial government—emperor, Senate, *Corps Législatif*, ministers—had disappeared. Furthermore, the provisional government, which had served the country well in the emergency, faithfully carried out its announced intention to dissolve as soon as it should have given the nation an elected assembly. Consequently, the Bordeaux gathering found itself the legatee of all the governments that had gone before, with powers absolutely undefined and unlimited. Furthermore, its members had been elected for no stipulated term. At once, therefore, the body became the supreme governing authority in the country; and for full five years an amazing combination of circumstances quite unexpectedly kept it in that rôle. As such, it made peace with Germany, enacted laws, levied taxes, controlled the military establishment, and finally prepared and put into effect the constitution under which the Third Republic lives today.

The Assembly could, of course, serve well enough as a legislature. But what about an executive? Under somewhat similar circumstances, the Long Parliament in England, the Continental Congress in America, and the French Convention of 1792-95 had kept executive functions in their own hands, exercising them through committees. The National Assembly of 1871 might have done the same thing. It, however, chose a course leading rather in the direction of a separate, even though controlled, executive, and bestowed upon the veteran historian and parliamentarian, Adolphe Thiers, the title and authority of "chief of the executive power." The idea of separation of powers probably had some influence in this decision, although the main consideration—inasmuch as an effort to get peace with Germany had been foreordained by the elections—was to give Thiers suitable prestige and authority in the coming negotiations. The separation did not as yet, however, go very far; for Thiers remained a member of the Assembly and could be controlled, or even displaced, by it at any time.

Thiers made  
"chief of the  
executive  
power"

Under these auspices, peace was negotiated and ratified. Its terms (laid down in the treaty of Frankfurt) were hard, but the best that could be obtained; and the nation fulfilled them

The question  
of a new con-  
stitution

promptly and to the letter. Then arose the question of a permanent frame of government. Who should make the new constitution, and for what kind of a government should it provide? Should the existing National Assembly fabricate the constitution, or should a new assembly be elected for the purpose? And was France to go on as a republic, or go back to monarchy?

Nobody had thought very much about these matters when the Assembly was elected. The one issue before the voters had been, Should the war be continued or ended? On this, the nation had spoken unequivocally. But on constitutional and political questions it had had no opportunity to express itself except in an incidental and inconclusive way. Doubtless many people rather vaguely supposed that, after carrying out the country's mandate to obtain peace, the National Assembly would consider its work done and give way to another body specially chosen to frame a constitution. Many doubted or denied that the Assembly itself had any proper authority to undertake the task. As matters worked out, however, the question of authority became academic. Serving perforce as the government of the country during the months while peace was being negotiated, the Assembly became so engrossed in the management of public affairs that it neither desired to take its hand from the helm nor felt that it could safely do so. Instead, it moved from Bordeaux to Versailles, and, after suppressing a menacing communard uprising in Paris,<sup>1</sup> settled itself to the task of giving the country the strong government that it obviously needed, and also, as time and circumstance afforded—and eventually with the consent of all parties—to the business of making a constitution.

Monarchists  
and republicans

The question of whether the present Assembly should make the constitution was tied up with the problem of the future form of government. There were, of course, both monarchists and republicans in the body. The former strongly predominated; of the 738 original members, hardly more than 200 were republicans. The number of republicans would undoubtedly have been larger but for the course of Gambetta and other republican leaders in opposing all thought of peace; many of their candi-

<sup>1</sup> The Commune was a movement in protest against a centralized form of government, whether monarchist or republican. The communards wanted a system based on a federation of communes.

dates had been defeated on this ground entirely, not because they were republicans; and the contemporary monarchist fling that France was "a republic without republicans" was clearly unfair. Nevertheless, it is exceedingly doubtful whether, if there could have been a genuine test, republican sentiment would have been found uppermost throughout the country. As it was, the Assembly was more than two-thirds monarchist, which at first glance seemed to assure that any constitution that came from its hands would be monarchist. Small wonder that most of the people who argued against the right of this particular agency to make a constitution were republicans!

The monarchists, however, were divided—irretrievably so, as events proved—and on that fact the fate of the republic hung. There were two main groups, and also a lesser one. The Legitimists, reactionary and clerical adherents of the old Bourbon monarchy, wanted to place on the throne the Count of Chambord, grandson of the Charles X who had lost his crown at the revolution of 1830. A party of Orleanists desired a restoration of the house of Orleans (overthrown in 1848), in the person of the Count of Paris, grandson of the citizen-king, Louis Philippe. And a small group of members who remained loyal to the Napoleonic tradition were bold enough to advocate a revival of the prostrate Second Empire, with the prince imperial, son of Napoleon III, on the throne.<sup>1</sup> "There is only one throne," observed Thiers, "and there are three claimants for a seat on it." The supreme object of the republicans was, of course, to prevent any one of the three from being seated; although obviously they would have been helpless if the monarchists could have composed their differences. As long as there was any serious chance that this would happen, the republican strategy was to prevent the framing of the constitution by the existing assembly, in the hope of throwing the task into the hands of a new body specially elected for the purpose and better reflecting the republican sentiment of the country. That they had everything to gain by delay was evidenced in midsummer of 1871, when republicans were chosen to fill 100 out of 111 seats that had fallen vacant. And eventually matters so worked out

<sup>1</sup> The lines were not drawn precisely, but it is computed that at the outset there were about 200 Legitimists, 200 Orleanists, and 30 Imperialists. The remaining members were either republicans or of uncertain classification.

tunity to place the Count of Paris on the throne should arise, the monarchist president would clear the way by resigning, as he probably would have done. Such opportunity, however, never came; and the septennial period for the presidency, thus established by monarchists in their own interest, passed into the permanent constitutional machinery of a republican state.<sup>1</sup>

The commission of thirty

These various developments made it imperative that the Assembly actively take up the task of framing a constitution. If the republic was to go on indefinitely, it must be put on a more regular basis. Hence, when voting MacMahon a seven-year term, the Assembly also provided for a commission, or committee, of thirty to draw up a *projet*, or draft. The work went rather slowly. There were two fairly comprehensive plans with which to start—one being that previously submitted to the Assembly by Dufaure, and another being a less liberal scheme presented by the Duc de Broglie.<sup>2</sup> But plenty of other schemes and proposals came from both committee members and outsiders, and many months were required to whip a report into shape.<sup>3</sup> Even after the committee was ready, the Assembly was slow to act; and it was only at the beginning of 1875, when the country was growing restless under the long delay, and when even Legitimist and Orleanist leaders were afraid of some kind of a Bonapartist *coup*, that debates on the proposed constitution were actively started.

The Wallon amendment

The committee had been dominated by monarchists, and its plan looked, after all, not to a permanent republican constitution, but only to some reorganization—in particular, the establishment of a bicameral parliament for the remaining portion of President MacMahon's term. At the end of that time, the chambers were to meet in joint session and "decide upon the measures to be taken." This was cold comfort for the republicans. But one of their number, the historian Wallon, found an

<sup>1</sup> On the royalist claimants and activities of the period, see C. T. Muret, *French Royalist Doctrines Since the Revolution* (New York, 1933), Chap. x. Monarchist sentiment has persisted to the present day, and is now represented principally by the League for French Action (see p. 588 below), supporting as claimant to the throne the Duke of Guise, heir of both the Bourbon and Orleanist families.

<sup>2</sup> One is reminded of the Virginia plan presented at the opening of the Philadelphia convention of 1787; also the Pruss plan laid before the Weimar convention in Germany in 1919. See p. 675 below.

<sup>3</sup> The unpublished minutes of the commission's proceedings are preserved in the archives of the Palais Bourbon, the building in which the Chamber of Deputies now sits.

ingenious way of getting round the difficulty. When the first article, containing the provision indicated, came up for discussion, he introduced an amendment, not indeed saying directly that the republic should be permanent, but indirectly accomplishing the same object by fixing the term of the president at seven years and making him eligible for reelection.<sup>1</sup> Nobody failed to see the point to the proposal. There was to be another president after MacMahon, and another, and another; the republic was to go on indefinitely. Here was a real challenge, and everybody was agog. To a man, the Legitimists objected. But enough Orleanists were swung to the motion's support to give a result of 353 votes in its favor to 352 opposed. The "Wallon amendment" prevailed, and thenceforth the presumption was that what the Assembly was arduously working into shape was to be, not a mere stop-gap agreement, but a permanent frame of government. Not without reason is the clever deputy from the Département du Nord often hailed by his countrymen as the father of the French constitution.

After this, progress was more rapid; and presently the Assembly was ready to adopt two of the three "constitutional laws" which compose the country's written constitution today. The first one, voted February 24, covered the organization of the Senate; the second, adopted twenty-four hours later, provided for the president, the ministers, and the Chamber of Deputies. Both were carried by substantial majorities. The two together, however, left many gaps to be filled. To a degree, these were taken care of by the third law of the series, adopted on July 16, and defining the "relations of the public powers," especially of the president and ministers with the chambers; to a degree, also, they were remedied by a law of August 2 on the election of senators, another of November 30 on the election of deputies, and a number of further supplementary measures, not strictly "constitutional" laws, but rather, as the French would say, "organic" laws or acts.<sup>2</sup>

The constitution adopted

The National Assembly had performed the task which it had

<sup>1</sup> "The president of the Republic is elected by an absolute majority of votes by the Senate and Chamber of Deputies united as a National Assembly. He is chosen for seven years, and he is reëligible." This became Art. 2 of the Law on the Organization of the Public Powers, adopted on February 25. The final vote on this particular article was 413 to 248.

<sup>2</sup> The texts of the three constitutional laws will be found in L. Duguit et H. Monnier, *Les constitutions*, 319-325, and in English translation in F. M. Anderson, *Constitutions*, 633-639, W. F. Dodd, *Modern Constitutions*, I, 286-294, and H. L.

The constitution's characteristics

set for itself<sup>1</sup>—but, remarks the principal French writer on the period, “how slowly, how painfully, how incoherently!”<sup>2</sup> The completed instrument bore on every page the marks of its tempestuous origin. In form, it cannot compare with the constitution of the United States, of Switzerland, of Germany (whether empire or republic), or, for that matter, with any one of a half dozen earlier constitutions of France herself. It consists of three separate, brief, poorly articulated documents. It shows little regard for orderly arrangement of material, and even the language employed is in spots decidedly below the French standard of grace and lucidity. More important, it makes no pretense to covering all of the matters which one expects to find treated in a constitution. It goes into rather needless detail at some points, and at others omits fundamentals. It contains no bill of rights, nor, indeed, any express guarantees of civil liberty.<sup>3</sup> It does not say how the ministers shall be selected, or whether they shall

McBain and L. Rogers, *New Constitutions of Europe*, 523-528. Texts of the two organic laws mentioned are in Duguít et Monnier, 325-335; Dodd, I, 205-208, and McBain and Rogers, 520-540. The best account of the events of 1875 is G. Hanotaux, *Contemporary France*, III, Chaps. i-iii; and the antecedents of the constitution are pointedly surveyed in A. Esmein, *Éléments de droit constitutionnel* (8th ed., Paris, 1927), II, Chap. i. There is an interesting interpretation in H. A. L. Fisher, *Republican Tradition in Europe*, Chap. xi. See also P. Deschanel, *Gambetta* (Paris, 1919), and G. Hanotaux, *L'Échec de la monarchie et la fondation de la république*, 2 vols. (Paris, 1926).

<sup>1</sup> The senatorial elections were held on January 30, 1876, the elections of deputies on February 20 and March 5; and on March 8 the Assembly—after more than five years of power—resigned its functions into the hands of the new parliament and passed out of existence. The elections are described in G. Hanotaux, *op. cit.*, III, Chaps. vi-vii, and the establishment of the new régime (although, of course, it is to be observed that MacMahon's presidency, the ministers, and the entire administrative and judicial system went on uninterrupted) is covered in E. Lavisse, *Histoire de France contemporaine* (Paris, 1921), VIII, Chap. i.

<sup>2</sup> G. Hanotaux, *op. cit.*, III, 283.

<sup>3</sup> It is to be observed, however, that some jurists agree with the late Professor Duguít in his contention that although the individual rights enumerated in the Declaration of Rights of 1789 are not mentioned in the constitutional laws of 1875, they are to be considered as lying at the basis of the French governmental system today. Any measure enacted by the national parliament in contravention of them, says Professor Duguít, would be unconstitutional. They are not mere dogmas or theories, but rather positive laws, binding not only upon the legislative chambers but upon the constituent National Assembly. *Traité de droit constitutionnel* (3rd ed.), II, 182 ff. Cf. Esmein's contrary view, in his *Éléments de droit constitutionnel* (8th ed.), II, 587. In view of existing doubts on the subject, it has more than once been proposed that a new bill of rights be formally adopted. On the status of individual liberty in France during the World War, see P. Renouvin, *The Forms of War Government in France* (New Haven, 1927), Chap. ii.

be members of Parliament, or how the members of the Chamber of Deputies shall be chosen, or what their term shall be. It does not nowadays say how the senators shall be elected; for although this matter was covered in the first of the three laws as passed in 1875, the seven articles relating to it were stripped of their constitutional status and reduced to the character of ordinary statute by an amendment adopted in 1884.<sup>1</sup> There is no provision for annual budgets; and, aside from a clause authorizing the Senate to be erected into a high court, the important subject of the judiciary is left entirely untouched.<sup>2</sup>

What are the reasons for this nondescript, haphazard aspect of the fundamental law of a people noted for their orderliness, exactness, and love of the symmetrical and logical? Certainly they do not flow from any lack of experience in constitution-making. Nowhere else in Europe had so many written constitutions been fabricated before 1875; and nowhere else had such instruments been so full, so explicit, and so letter-perfect. The shortcomings--in form and appearance at least--of the constitution of the Third Republic arose out of the give-and-take method by which it was made. From end to end, it was a product of compromise--the handiwork of a body of men who, taken as a whole, and because of the political situation already described, felt no enthusiasm for their labor and took no pride in its results. A monarchist majority found itself maneuvered, largely by its own ineptitude, into writing a republican constitution. But it neither wanted nor expected that constitution to last; and, viewing the instrument as a makeshift, it had nothing but apologies for it. As for the republicans, they rejoiced in the discomfiture of their opponents; but they had been obliged to make so many concessions that, at best, they could look upon the new frame of government, based as it was upon the ill-concealed hope of a resurrection of monarchy, as only something with which to start. "The constitution of 1875," says M. Barthélemy, "is a hang-dog constitution, a 'Cinderella slipping noiselessly between the parties who despise her.'"<sup>3</sup>

Reasons

The French have a saying that "only the provisional endures."

<sup>1</sup> Later in the same year, these articles were completely discarded and new legislation on the subject was enacted. McBain and Rogers, *op. cit.*, 541.

<sup>2</sup> The constitution is analyzed briefly in E. M. Sait, *Government and Politics of France* (Yonkers, 1920), Chap. i, and more fully in G. Hanotaux, *op. cit.*, III, Chap. v.

<sup>3</sup> *The Government of France*, 20.



Why the constitution endured

So it has certainly been with the country's constitutions. Half a dozen such instruments, meticulously drafted, cleverly phrased, and presumptively permanent, fell to the ground in swift succession. The hodge-podge fundamental law of 1875, grudgingly adopted and inspiring little confidence, struck root, proved adequate for the country's needs, emerged unscathed from the acid test of the World War and post-war crises, and is today as solidly grounded as any in Europe. One reason, of course, for the constitution's survival is that as time went on France gradually grew more frankly and positively republican, even if not entirely so, and hence never again gave monarchists a chance to write a constitution to their liking. But a main explanation lies in the very qualities in the constitution which make it look so shabby in comparison with the others—its brevity, its incompleteness, its lack of sonorous phrases and challenging principles. It did not seek to pull down a full-blown political system out of the heavens, but only to piece together a set of institutions that would serve immediate practical ends. That which already existed, *e.g.*, the president and the ministers, was to be continued, and to this was to be added only the most obvious necessities, chiefly a bicameral parliament to supersede the emergency assembly elected in 1871. Powers and relations were defined sparingly, and often in general terms, leaving the bulk of arrangements to be supplied, as need arose, by legislation, interpretation, and usage. Except in so far as the cabinet system envisaged was ultimately of English origin, everything was thoroughly French; at all events, there was no direct and deliberate borrowing, as from Britain in 1814 and from the United States in 1848. Practical rather than philosophical, matter of fact rather than doctrinaire, the constitution looked to no abrupt break with the past and affronted no feelings of national pride and spirit. Rather, it was hammered out, piece by piece, on the basis of hard experience, in the effort to meet the demand of an impatient country for a settled, workable system. It grew first, and only afterwards was put on paper. So constructed, it met the needs of the day, without losing capacity to be adapted and applied to meet those of other days that were different. If deficient in logic of content and arrangement, it was based, as a French authority has truly said, on "the larger logic of history."<sup>1</sup> So fortified, it has proved an instrument of great

<sup>1</sup> A. Esmein, *Éléments de droit constitutionnel* (8th ed.), II, 30.

vitality and strength. Profoundly as France was affected by the World War, the constitution came through with no organic damage. It is, furthermore, one of the few European constitutions neither overborne nor seriously threatened by dictatorship in these last ten or twelve years; and although an unusually acute political crisis of February, 1934, brought certain proposed amendments into the forefront of public attention, the fundamental law in general was in no wise endangered.

Without doubt, the final adoption of the three constitutional laws of 1875 was greatly facilitated by the provisions made for amendment. The authors of earlier constitutions flattered themselves that their handiwork was well-nigh perfect. But the makers of the present one labored under no such illusion. Every one expected to find himself wanting changes made; and every one, especially if a monarchist, was interested in setting up arrangements by which changes could be effected quickly and easily, yet without *coup d'état* or revolution. Accordingly, the Law on the Organization of the Public Powers lays down a very simple amending procedure: (1) the president (or the ministers acting in his name) may propose an amendment; or the proposal may come from one or both of the houses of Parliament; (2) each house considers the matter and decides, by a majority vote, whether in its judgment "a revision of the constitutional laws [in respect to a specified matter] is necessary"; (3) if both houses act affirmatively, the members meet in joint session as a National Assembly and take final action, by absolute majority of the total membership.<sup>1</sup> Any proposal that successfully runs this gauntlet forthwith becomes part of the constitution.

The process  
of constitu-  
tional  
amendment

This mode of amendment presents a number of interesting features. In the first place, the same men amend the constitution who make the ordinary laws. After the preliminary stage, however, they are organized in a different way. When convened in National Assembly, the chambers lose their individuality for the time being, and senators and deputies become members, on a common footing, of a new, distinct, constituent body;<sup>2</sup> and

Features of  
the plan

<sup>1</sup> On the early doubt as to whether a majority of all members or only a majority of those voting should be required, see A. Esmein, *op. cit.* (8th ed.), II, 542-543. As indicated above, the practice is to require a majority of the entire membership. There being now 314 senators and 615 deputies, 465 votes in the National Assembly would at present be necessary for the adoption of an amendment.

<sup>2</sup> No special officers are elected for the direction of the Assembly's proceedings. The president, vice-presidents, and secretaries of the Senate serve as the "bureau."

whereas the regular work of legislation is carried on by the chambers sitting in their respective buildings in the national capital, the Assembly meets in the hall occupied from 1876 to 1879 by the Chamber of Deputies in the old royal palace at Versailles. In the second place, the amending process is simple and speedy. It is, of course, not more so than in England, where, as we have seen, Parliament adopts constitutional changes in exactly the same way that it enacts ordinary laws. But, as compared with the method prevailing in the United States, where amendments to the federal constitution, after being proposed by Congress (or by a special convention), have to be ratified by the legislatures (or by conventions) in three-fourths of the states, it is conspicuously easy and speedy. The original constitution was not submitted to a popular vote, and neither are amendments. Either house can, of course, block a proposed amendment by refusing to vote the necessary preliminary resolution.<sup>1</sup> But, once this initial stage has been passed in the two chambers, the decision rests with a single body and is likely to be reached quickly. The plan has the merit of making it somewhat difficult to set the amending machinery going, but easy to obtain results after it is started.

Restriction  
on the  
amending  
power

So far as the letter of the constitution is concerned, only one restriction has been placed upon the Assembly's amending power, namely, that the republican form of government shall never be made the subject of a proposed revision. Even this prohibition (itself originating in an amendment of 1884), must, however, be regarded as a gentleman's agreement rather than as an insurmountable restraint; for the National Assembly, once set up, becomes a sovereign body, equally with the Assembly which made the constitution in the first place, and as such cannot be regarded as bound by decisions of its predecessors. Any action of the Assembly would seem to be *ipso facto* valid and enforceable, even if directly contravening the clause cited, or—so far as that goes—even if it displaced the entire existing constitution by a new one.<sup>2</sup> In France, therefore, as in Britain, the con-

<sup>1</sup> This feature of the plan is designed primarily to protect the Senate—whose members are overwhelmed numerically by the deputies in the National Assembly—against amendments invading its powers and rights.

<sup>2</sup> There is not complete agreement among French authorities on this point. Duguít, *op. cit.* (2nd ed., IV, 538–540), takes the view here expressed; Esmein and Poincaré dissent. Thus Poincaré: "The minister, Jules Ferry, who took the initia-

stitution is at the mercy of the government; for in both countries the people, although certainly to be regarded as the ultimate authority, have tacitly surrendered to the government—in effect, to the legislature—full constitution-making and amending powers. It is true that in France a certain formal, procedural distinction between constituent and legislative activities is maintained; but in essence the situation is the same as across the Channel, where no procedural differences exist.

In point of fact, the amending power has been used sparingly. Great and necessary additions to, or other changes in, the governmental system have been made freely, not only by interpretation and usage but by ordinary laws and by laws which, while not strictly “constitutional,” are still somewhat more fundamental than simple statutes (the electoral laws afford illustrations), and hence are termed “organic” acts. But there have been no formal constitutional amendments except (1) one of 1879, repealing an article in the law of February 25, 1875, which prescribed that the seat of government should be at Versailles;<sup>1</sup> (2) a series of four, adopted in 1884, as follows: (a) reducing from three to two months the maximum interval between a dissolution of the Chamber of Deputies by the president of the Republic and the election of the new chamber, and requiring that the latter shall meet within ten days after the election, (b) forbidding the republican form of government to be made the subject of a proposal for revision, and making members of families that have reigned in France ineligible to the presidency, (c) withdrawing its constitutional character from that part of the law of February 24, 1875, dealing with the election of senators, and leaving that matter to be regulated, as it is today, by simple statute, and

Amendments  
thus far  
adopted

tive of this measure, did not, of course, believe that a word inserted in a law could make the constitution eternal. But he wished to put an end to the attacks, then incessantly renewed, of the enemies of the Republic. The practical bearing of this proposition is easily grasped. Any revision which would have for its object the substitution of a monarchical system for the Republic would be illegal and revolutionary. The head of the state would have the right, as it would be his duty, to refuse to promulgate such a law if voted.” *How France Is Governed*, 163. Cf. E. M. Sait, *Government and Politics of France*, 28–29. There is similar difference of opinion on whether the Assembly, once convened, can legally consider and act upon amendments which have not been passed through the regular preliminary stages in the houses separately. Duguit, *op. cit.* (2nd ed., IV, 541–542), says it may; Esmein, that it may not (*op. cit.*, II, 547). Duguit’s view is to be preferred. Cf. Sait, *op. cit.*, 29.

<sup>1</sup> A statute of July 22, 1879, transferred the seat of government to Paris.

(d) rescinding a paragraph of the law of July 16, 1875, which required that on the first Sunday after the opening of a parliamentary session divine aid in behalf of the chambers should be invoked in all churches and temples; and (3) an amendment of August 10, 1926, pressed upon reluctant chambers by an insistent ministry, and adding to the law of February 25, 1875, provision for a national sinking-fund and for certain increases of the financial powers of the government in the interest of national solvency. It is hardly necessary to say that these changes, taken together, do not make the governmental system anything very different from what it was when the constitution was first adopted.<sup>1</sup>

#### Organic laws

But of course, in France as everywhere else, the real constitution is by no means simply the texts labelled as such; and by the same token constitutional development is no mere matter of the amending of documents. Around the three "constitutional laws" has been built up a vast structure of organic law, ordinary law, and custom. These are the things that put flesh on the skeleton, or, to change the figure, transform an outline into a system. The nature of "organic" laws has already been suggested. In reality, as Professor Munro remarks, there is not much difference between an organic law and an ordinary law except a sentimental one.<sup>2</sup> Both are enacted, and may be revised or repealed, in the same way. There is some advantage, however, in a terminology that puts a measure regulating the election of deputies in a different category from a statute laying duties on imports of wheat. The one type of law is obviously more fundamental, less open to change save for urgent reasons and after mature deliberation—in short, more analogous to constitutional law in the strictest sense—than is the other. Indeed, the equivalent of what is contained in most French organic laws is in many other countries found in the written constitution

<sup>1</sup> Texts of amendments of 1879 and 1884 in L. Duguit et H. Monnier, *Les constitutions*, 336-338; F. M. Anderson, *Constitutions*, 639-640; and H. L. McBain and L. Rogers, *New Constitutions of Europe*, 528-529. Cf. J. Aufray, *Étude sur la facilité de la révision de notre constitution* (Paris, 1908), and H. Dupeyroux, "Du système français de revision constitutionnelle," *Rev. du Droit Public et de la Sci. Polit.*, July-Sept., 1931. Several amendments were suggested during the World War, but none was adopted (see Duguit, *op. cit.*, Appendix). The amendment of 1926 is described at length in A. Esmein, *op. cit.* (8th ed.), II, 555-567. On other recent proposals for amendment, see *Polit. Quar.*, Apr.-June, 1933, pp. 255-266; also pp. 490-492, 571-572 below.

<sup>2</sup> *Governments of Europe* (2nd ed.), 394.

itself. But this merely illustrates how necessary it is in studying the actual working constitution of any state to take into account statutes as well as formal constitutional documents.

Custom, or usage, too, is highly important. Britain has no monopoly of this sort of thing. It is true that the elements of the cabinet system, for example, are provided for in a fundamental law in France whereas they are not on the opposite side of the Channel; but the actual workings of the system are almost as much a matter of usage in one country as in the other. In fifty-seven years, the Chamber of Deputies has been dissolved only once; and what stands in the way of further dissolutions is not mainly the unusual constitutional requirement of the Senate's assent,<sup>1</sup> but tradition and custom. In the same length of time, only one president of the Republic has been reëlected; and usage seems to have made a one-term rule quite as much a matter of unwritten law as a no-third-term rule has come to be in the United States. Other illustrations will come to light as we proceed.

Usage

We have seen that the members of the national legislature, sitting in the guise of a National Assembly, can make any changes whatsoever in the provisions of the written fundamental law. In closing, it may be noted, further, that the legislature itself can enact a statute palpably inconsistent with that law with full assurance that it will be recognized and enforced by the courts—which is tantamount to saying that in France, as in Britain, Parliament is supreme and the American device of judicial review of statutes does not exist. Slightly over a hundred years ago (1833), the country's highest tribunal, the Court of Cassation, was faced with the question of whether it should declare null and void a press law which was plainly in violation of the Constitutional Charter of 1830. Its decision was that any law "deliberated and promulgated" according to the constitutional forms prescribed by the Charter was "valid and enforceable"; and the position thus taken has been adhered to, under successive constitutions, from that day to this. For a quarter of a century, the Council of State (the highest administrative court) has freely scrutinized ordinances issued by the administrative authorities to determine whether they were *ultra vires*; if it finds any to be such, it annuls them. As we have seen, the courts in England exercise a similar function, though without

Status of  
judicial re-  
view

<sup>1</sup> See pp. 485-486 below.

formal annulment; and in view of the steadily increasing volume of "subordinate," or "administrative," legislation nowadays in both countries, there is in reality a good deal of what is tantamount to judicial review on both sides of the Channel. In neither France nor England, however, is any act of Parliament challengeable judicially.

A question  
for the future

How long this will remain true is a matter of doubt; for in France judicial review has become a subject of lively discussion. Opinion is sharply divided. On the one hand, an increasing number of the country's ablest constitutional lawyers not only believe that it would be desirable for the courts to review acts of Parliament as to their constitutionality, but consider that the right to do so already exists and needs only to be exercised. Equally good authorities, however—as yet in the majority—consider that the principle of separation of powers, as applied to the legislature and judiciary, forbids the exercise of any such function unless supported by express constitutional provision. The question has its political, as well as its constitutional, aspect: conservatives think favorably of judicial review as a possible check upon an increasingly radical Chamber of Deputies; people whose politics identify them with the Left, coveting a maximum of freedom and power for the elected representatives of the people, are generally opposed. In several European states, *e.g.*, Norway, Switzerland, Rumania, Greece, and the Irish Free State, full-orbed judicial review has already come into play; in a number of others, including Germany, Austria, and Czechoslovakia, there have been important developments in the same direction.<sup>1</sup> A leading French scholar has predicted that the Court of Cassation in his own country will soon be found pronouncing statutes unconstitutional with quite as much freedom as does the Supreme Court of the United States.<sup>2</sup> Judging by the present drift of opinion—in France as well as elsewhere—the prophecy seems not unlikely to be fulfilled.<sup>3</sup>

<sup>1</sup> See pp. 693–695 below.

<sup>2</sup> L. Duguit, *Souveraineté et liberté* (Paris, 1922), 200.

<sup>3</sup> See J. W. Garner, *Political Science and Government*, 764–768; C. G. Haines, "Some Phases of the Theory and Practice of Judicial Review of Legislation in Foreign Countries," *Amer. Polit. Sci. Rev.*, Aug., 1930. From an extensive French literature may be cited one additional title: A. Blondel, *Le contrôle juridictionnel de la constitutionnalité des lois* (Paris, 1928).

## CHAPTER XXIII

### THE PRESIDENT OF THE REPUBLIC

It was in America, rather than Europe, that the title and office of "president" first came into their present more or less axiomatic association with the idea of republican government. The United States has had a president since 1789, and various Latin American states from periods running back a hundred years or more. But the oldest presidency in Europe is that of Switzerland, dating from 1848; and even it is only an incidental feature of a plan under which the national executive powers are vested, not in the president alone, but in a council of seven persons. The first French republic tried different kinds of executives, but never had a president. The second republic, influenced somewhat by the American example, had a president— but only to see Louis Napoleon make the office a stepping-stone to an imperial title. This unhappy experience left the republican elements of the country in a somewhat skeptical frame of mind; and down to 1870 most of them felt—as indeed Jules Grévy had urged in 1848—that there ought to be no president of the Republic, but only a "president of the council of ministers" (in effect, a prime minister)—a head of the government not set up by popular election as an authority coördinate with Parliament, but chosen by Parliament itself and kept under the full control of that body. Reformers elsewhere in later times have occasionally held the same view; and in Prussia, Bavaria, and indeed all of the German *Länder* of pre-Nazi days one would have found in operation precisely the plan which French republicans of sixty or seventy years ago had in mind. The National Assembly of 1871-75, however, came gradually to a different arrangement. Monarchist though it was, it created—or revived—the most obvious symbol which a republican government can have, *i.e.*, a chief executive known as "the president"; and, curiously, Grévy himself not only became the first Frenchman to be elected to the office under the constitution of 1875, but occupied it longer than has any other incumbent.<sup>1</sup>

Republics  
and presiden-  
cies

<sup>1</sup> Speaking of the unimpressive start which the presidency of the Third Republic



How the  
presidency of  
the Third  
Republic  
arose

The architects of the constitution did not, of course, squarely and disinterestedly face the question of what form of executive to establish. Instead, they found themselves with a fully developed presidency on their hands, and merely voted to continue it. How this came about has already been related. The National Assembly, in 1871, was confronted with tasks which required the setting up of a "chief of the executive power," and it forthwith elected to that dignity the man of most outstanding qualifications, M. Thiers. There was no thought of a permanent presidential office—not even when, after a few months, the title of president was officially introduced. Nevertheless, precisely such an office was actually in the making; and the quarrels of the monarchists gave it every chance to grow. Already fully developed by 1875, the office did not have to be established, but merely to be assigned a place in the new constitutional order. There was therefore at that time little actual weighing either of French precedent or of foreign experience. The constitution of the first republic, like that of Switzerland, might have suggested a collegial, or plural, form of executive; that of the second republic might have pointed to a decision in favor of direct popular election. But little attention was paid to either. Nor is it clear that the country would have been any better off otherwise. Plural executives—Switzerland excepted—rarely work well; and direct popular election of a chief executive who is to function under the restrictions of a cabinet system—though fairly successful for a time in the German Republic—might easily lead to difficulties.

Theory and  
fact of the  
president's  
position

The office resulting from this rather casual procedure is one of the curiosities of European politics. In many respects, the president of France is an imposing figure. He is the supreme embodiment of the executive power, the titular head of the state. The constitution endows him with numerous weighty functions. He receives a salary of 2,000,000 francs a year, besides certain allowances, voted annually as part of the budget. The nation provides him with three splendid residences,<sup>1</sup> and

made, a French writer remarks: "No longer did he [Grévy] wish openly to abolish it [the presidency]; he occupied it and effaced it." J. Barthélemy, *The Government of France*, 89.

<sup>1</sup> The palace of the Élysée (the splendid structure on the Champs-Élysées in which Napoleon signed his abdication after Waterloo) and the châteaux of Fontainebleau and Rambouillet.

he lives in regal style. Wherever he goes, he is received with civil and military honors such as elsewhere are accorded only to royalty. He is, as a French scholar has said, "a constitutional king for seven years"—and for as much longer as his tenure may be extended by reëlection. In short, his position is as dignified, influential, and powerful as theories and forms can make it. But in "theories and forms" lies the rub. "Each of the acts of the president of the Republic," says the constitution, "must be countersigned by a minister"; and this merciless provision means that while power may be the president's, it can be exercised only through ministers, who, being responsible to Parliament, will naturally and rightfully insist on determining when and how it shall be wielded. We shall see that the president need not be a nonentity, nor yet a mere ornament. He may, indeed—just as may the king in England—wield influence which amounts to power. His main practical importance, however, is as a pageant rather than as a ruler—as a symbol of national unity and a balance wheel in a complicated political machine. It goes without saying that some presidents have been less happy than others in such a rôle.

How does a president get his position, and what types of men are most likely to attain the honor? There are, of course, three well-known ways in which the chief executive of a republic may be chosen: by direct popular vote, by the legislature, and by some kind of electoral college specially constructed for the purpose. The German Republic employs the first method, Switzerland and Czechoslovakia the second, and the United States (in theory, at all events) the third. France had tried a modified form of the second plan in her first period of republicanism, and in 1848 had gone over to direct popular election. Neither experience had been happy. In 1875, she, in effect, adopted the plan of an electoral college; for, although the National Assembly to which elections were entrusted consists of the members of the two houses of the legislature, it is, in legal theory, a distinct authority, standing on its own constitutional foundation. The arrangement was a perfectly natural one, considering that the National Assembly which made the constitution had itself already elected two presidents, Thiers and MacMahon.

Presidential  
elections

The formal procedure of a presidential election is laid down in

detail in the constitution and a supplementary organic law, although, just as in the United States, there has grown up around the legal requirements a considerable amount of extra-legal usage. At least a month before his term is to expire, the president causes a meeting of the National Assembly to be held to choose his successor. If for any reason the president himself fails to act up to the time when only two weeks of his term remain, the presiding officer of the Senate may take the initiative; and if the president dies or resigns, the Assembly meets without formal summons at all. There is no vice-president, and no law of succession; so that whenever the presidency falls vacant there must be an election; and, at whatever time and under whatever circumstances chosen, a newly elected president is entitled to a full term of seven years. A vacancy may, of course, occur unexpectedly, entailing a hurried election. It did so in 1894, when Sadi-Carnot was assassinated, again in the very next year when Casimir-Perier resigned, and, most recently, in 1932, when Paul Doumer was shot by a Russian fanatic. Indeed, out of a total of 13 presidents from the establishment of the septennate to the accession of President Lebrun in 1932, only six served out a full term.<sup>1</sup>

Candidates  
and blocs

Except on rare occasions when the event has some symbolical significance, *e.g.*, Poincaré's victory in 1913 and Briand's defeat in 1931, a presidential election is likely to be a rather tame affair. Since the choice lies with a few hundred parliamentarians, and not with the nation at large, there is no occasion for a great campaign through the country such as we are familiar with in the United States. So far as the formalities in the National Assembly go, only a few hours are required. This does not imply, however, any lack of preliminary maneuvering. The *chansonniers* in the cabarets may make the presidency the butt of no

<sup>1</sup> During the interval between the death or resignation of a president and the election of his successor, full executive power is vested in the council of ministers. Curiously, there is no provision for a situation arising from the president's incapacitation by illness or his absence from the country; but it goes without saying that the ministerial council would act in these contingencies also. As will appear, this body is at all times the actual, working executive; hence its temporary assumption of the functions of the titular head of the state involves no difficulty. The situation resulting in the United States from a similar lack of constitutional provision is not so easily handled, as witness the problems that arose during the prolonged illness of President Wilson in 1919-20. See J. Kerney, "Government by Proxy," *Century Mag.*, Feb., 1926.

end of witticisms because of the slender powers that go with it, but political leaders ardently seek it and parties and party *blocs* try hard to keep it out of the hands of their rivals. When therefore an election impends, there are plenty of signs of interest, at least in parliamentary circles. The number of parties is so great that no one of them can ever hope to elect a chief executive single handedly. Consequently, it becomes a matter of building up combinations or *blocs* pledged to the support of this or that candidate, passive or avowed. There is no formal nominating machinery. But days before the Assembly is to meet *blocs* have been formed, candidates boomed, caucuses held, agreements reached; and the persons who are going to be voted for are, with rare exceptions, perfectly well known, not only to the supporting groups themselves, but to their rivals and to the country at large. Not only so, but as a rule the outcome can be predicted with a good deal of assurance. For usually the race narrows to two candidates, whose respective strength is a matter of figures that anyone familiar with the situation can compute. The candidates themselves must remain in the background. They may have laid the foundations of success by cultivating friendships, subscribing to worthy causes, and in other ways keeping themselves in favor with Parliament and the public. They may even make a few speeches. But—in theory at all events, if not always in actual fact—the presidency, like kingship in England, is outside the realm of politics; and its seekers must confine their talk to appeals to patriotism, praise of civic achievements, and similarly colorless and innocuous remarks—especially such as will indicate readiness, if elected, to respect all parties and show favor to none. Open and direct electioneering would be resented by the members of the Assembly and disapproved by public opinion.

The business of an electoral body is to vote, not to debate; and the National Assembly, when choosing a president, neither hears speeches naming and extolling the candidates nor discusses any aspect of the task in hand. "When the Assembly is convoked for a presidential election," writes a statesman who has participated in such an event a number of times and on one occasion was himself a successful candidate, "the members vote without discussion. The urn is then placed on the tribune [the platform from which speakers would address the body if debate took

Procedure in  
the National  
Assembly

place], and as an usher with a silver chain calls their names in a sonorous voice the members of the Assembly pass in a file in order to deposit their ballot-papers. . . . The procession of voters lasts a long time; there are nearly nine hundred votes to be cast.<sup>1</sup> When the vote is completed, the scrutators [*i.e.*, tellers] drawn by lot from among the members of the Assembly, count the votes in an adjoining hall. If no candidate has obtained an absolute majority of votes, the president<sup>2</sup> announces a second ballot, and so on, if needful, until there is some result.<sup>3</sup> The candidate elected is proclaimed by the president of the Assembly. There are applause and cries of *Vive la République!* and the Assembly dissolves. The new president, accompanied by the ministers, reënters Paris and installs himself in the Palais de l'Élysée."<sup>4</sup> The inauguration takes place immediately if the election has been called to fill a vacancy already existing; otherwise, on the day on which the former president's term expires. The incoming executive is escorted to the Élysée by the prime minister and a regiment of *cuirassiers*; the retiring president makes a formal speech and his successor a reply; and afterwards the two go together to the Hôtel de Ville, where they are received by representatives of the municipality and of the department of the Seine. The people line the streets and cheer; but the formal ceremony is attended only by the ministers and by committees (including the presidents) of the two chambers.

Qualifica-  
tions and re-  
eligibility

The constitution of the United States lays down certain qualifications for the president, and the earlier republican constitutions of France also contained important provisions of the kind. Curiously, the constitution of the Third Republic, as originally adopted, was mute on the subject. Apparently the framers assumed that the National Assembly would never elect any one who was not a French citizen, twenty-one years of age

<sup>1</sup> The number is now (in 1934) 920. The time consumed in going through the list a single time exceeds two hours.

<sup>2</sup> The president of the Senate occupies the chair, even when, as sometimes happens, he is one of the candidates to be voted on.

<sup>3</sup> So commonly has a *bloc* been built up in advance with sufficient votes to ensure the choice of its candidate that a second ballot has been necessary in only four instances (1886, 1895, 1913, and 1931). A third ballot has never been required.

<sup>4</sup> R. Poincaré, *How France Is Governed*, 168-169. Much information on presidential elections is presented in J. E. C. Bodley, *France* (New York, 1900), I, 271-332, and the subject is discussed systematically in A. Esmein, *Éléments de droit constitutionnel* (8th ed.), II, 40-46. See also A. Tridon, "France's Way of Choosing a President," *Amer. Rev. of Revs.*, Dec., 1912.

or over, and in possession of full civil and political rights, and were willing to let it go at that. As indicated above, an amendment of 1884 debars members of all families—Bourbon, Orleanist, Bonapartist—that have ever reigned in France. But this remains the only formal restriction; there is not even anything (except the fact that women have not yet entered French public life) to prevent a woman from being elected.

On one point, however, the French constitution is more specific than the American, namely, as to the president's reëligibility. It is not left to be inferred that a president may be reëlected; it is so stipulated. And he may be reëlected for any number of terms, consecutive or otherwise. The clause of the constitution of 1848 which made the president reëligible only after an interval of four years had much to do with producing the *coup d'état* of 1851, and the plan has never been revived. The relatively long term nowadays sets up, however, a certain presumption against even a single reëlection. Only one president, Grévy, has been elected a second time; and chagrin caused by the misdeeds of his son-in-law led him to resign (1887) before his second term was far advanced. Indeed, a single-term tradition seems about as securely entrenched in France as is the no-third-term tradition in the United States.

In his *American Commonwealth*, the late Lord Bryce devoted a chapter to explaining "why great men are not chosen president." Less than a chapter would be required to answer the same question for France. No one, as we have seen, can go far as a presidential candidate in that country without enlisting the support of two or three, or more, different parties or parliamentary groups. To do this, however, one must not be of too pronounced views, too fully on record, or too self-assertive. It is desirable, indeed practically necessary, to have had political experience; in point of fact, every president since MacMahon has had a previous parliamentary career, and all have served—in some cases repeatedly—either as minister or as presiding officer in one or both of the branches of Parliament. But party and parliamentary leaders of the first rank are seldom chosen. They have made too many enemies. They are too prominently identified with programs and "causes." Their habit of leadership and dominance might render them dangerous, or at any rate troublesome, at the Élysée. There have been some strong presidents. Casimir-

Types of men  
who attain  
the presi-  
dency

Perier was one; Poincaré was another. But for the most part the Gambettas, the Ferrys, the Waldeck-Rousseaus, the Clemenceaus, and the Briands have been passed over in favor of amiable and "safe" mediocrities like Faure, Loubet, Fallières, and Doumer, whose earlier careers fitted them to be compromise candidates, and who, accepting the office for what it is, have supplied dignity, impartiality, and coöperation without laying claim to any particular brilliance or other distinction.<sup>1</sup> The French presidency is, indeed, no office for a strong man. Such a man expects to have power. But under the French form of political organization, power is, and must be, assigned else-

<sup>1</sup> The complete list of presidents is as follows:

1. *Thiers*, 1871-73. Parliamentarian, patriot, diplomat. Resigned because of differences with the National Assembly.
2. *MacMahon*, 1873-79. Soldier and monarchist. Resigned rather than dismiss army officers accused of Bonapartist leanings.
3. *Grévy*, 1879-87. Bourgeois lawyer and ardent republican. Only president to be reelected. Resigned because of scandals involving a member of his family.
4. *Sadi-Carnot*, 1887-94. Engineer and "dark horse" presidential candidate. Assassinated.
5. *Casimir-Perier*, 1894-95. Masterful personality and experienced statesman. Sensitive to criticism and impatient with weakness of his position. Resigned after only a few months in office.
6. *Faure*, 1895-99. Bourgeois shipowner. A mild and cautious man in a difficult situation. Died in office.
7. *Loubet*, 1899-1906. Bourgeois and self-effacing.
8. *Fallières*, 1906-13. Like predecessor.
9. *Poincaré*, 1913-20. Able lawyer and vigorous personality. Many times minister. France's "war president."
10. *Deschanel*, 1920. Fifteen times elected president of the Chamber of Deputies. Attained the presidency after long seeking it, only to be compelled by a mental breakdown to resign within a few months.
11. *Millerand*, 1920-24. Began public career as a Socialist. As president, ardently advocated increase of his powers. Overreached himself, and compelled by parliamentary deadlock to resign.
12. *Doumergue*, 1924-31. Went from presidency of the Senate to presidency of the Republic. As unassertive and self-effacing as could be desired; nevertheless was recalled from retirement to take the helm as premier during the political crisis of February, 1934.
13. *Doumer*, 1931-32. An Auvergnat of peasant stock. At various times engraver, professor, editor, and banker. A seventy-four-year-old senator and ex-minister when elected president over M. Briand. Died in office from effect of assassin's bullet.
14. *Lebrun*, 1932—. In Parliament almost continuously after 1900. Vice-president of the Senate when chosen president of the Republic. Regarded as somewhat reactionary.

For characterizations of the French presidents by French writers, see A. Guérard, "In the Realm of King Log," *Scribner's Mag.*, Feb., 1925, and E. A. Vizetelly, *Republican France: Her Presidents, Statesmen, and Policy* (London, 1924).

where, *i.e.*, to the ministers. As a recent writer suggests, the French must therefore not expect to find "a succession of Bonapartes, Bismarcks, Lincolns, and Gladstones in that high office."<sup>1</sup> In point of fact, there is probably more worrying about the quality of French presidents outside of France than inside.

Upon turning to the powers and functions of the president, the uninitiated might well be struck with amazement. In a book by the monarchist Duc de Broglie, he would read that the president is "a chief invested with all the attributes of royalty: initiative, veto, and execution of the laws; direction of the administration in all of its branches; appointment of all employees of the government; command of the forces on land and sea—a royal chief, without the royal name and the royal permanence."<sup>2</sup> On the other hand, he would read in a volume by Sir Henry Maine: "There is no living functionary who occupies a more pitiable position than a French president. The old kings of France reigned and governed. The constitutional king, according to M. Thiers, reigns, but does not govern. The president of the United States governs, but he does not reign. It has been reserved for the president of the French Republic neither to reign nor yet to govern."<sup>3</sup> The explanation, of course, is that the former writer is thinking simply of the position in which the constitution, in certain of its clauses, seems to place the president, while the latter has in mind the cold actualities of the situation. Any one who has studied the government of England will at once be reminded of classic passages in writers like Bagehot relating to the status and powers of the king.<sup>4</sup> Fundamentally, the situation is the same on the two sides of the Channel. The titular head of the state is endowed in form with all of the weighty authority that would seem to go with such a position. But in both cases, practically the whole range of powers may be exercised only on the advice of responsible ministers—which in practice means by the ministers themselves. In other words, France, like Britain, has a parliamentary form of government. True, she has a president. But this is only because, after much wavering, she has settled down as a republic rather than a monarchy. She no more

Presidential  
powers: theory  
and fact

<sup>1</sup> W. B. Munro, *The Governments of Europe* (2nd ed.), 408.

<sup>2</sup> *Vues sur le gouvernement de la France* (2nd ed., Paris, 1872), 227.

<sup>3</sup> *Popular Government* (London, 1885), 250.

<sup>4</sup> See p. 59 above.



has a presidential form of government, as opposed to the parliamentary form, than has Britain herself. Comparison of what one finds at Paris therefore leads almost entirely in the direction of London rather than that of Washington.

At first glance, it seems absurd to talk, as writers do, about the powers of the president, and then confess that they are really not his powers at all, but rather the ministers'. One cannot very well, however, get away from much procedure, because not only in the letter of the constitution, but in the eye of the law, the powers in question *are* the president's. The situation is precisely as in Britain, where the executive (and various other) powers historically belong to the king, even though they have long since come to be exercised only through ministers who are responsible to Parliament, and are euphemistically described as powers of the "crown." In law, the French president is endowed with many and weighty powers, even though in this case the exercise of them by the ministers is a matter of formal documentary provision, and not simply of usage as it is on the other side of the Channel.

**Executive powers:**

**1. Promulgation and execution of the laws**

**2. Appointments and removals**

What are the most important of these powers, and under what conditions are they wielded? As might be expected, they divide into two main groups—executive and legislative. Naturally, also, the former is the more important, since legislation is chiefly the business of a different, though not entirely separate, agency, *i.e.*, Parliament. First of all, the president, as chief executive, promulgates the laws and sees to their enforcement; at all events, every new law is proclaimed and every enforcing act performed in his name. In the next place, all national civil officials (not only at Paris, but throughout the country), and all army and navy officers, are appointed also in the president's name. Higher officials are nominated to the president by the ministers and appointed by presidential decree; inferior ones are designated by the ministers without such formality. Formality it is; because although the president may suggest appropriate appointments and advise against those which he deems inappropriate, he must acquiesce in his ministers' decisions. Indeed, he is lucky if he always knows in advance what the ministers intend to do. As a rule, new offices are created by act of Parliament; but some have owed their origin, rather, to presidential decree. Only since the World War has Parliament established its exclusive right to

create even such important offices as new ministerial posts. In all instances, Parliament, however, may fix the qualifications to be required of appointees; and it may go as far as it likes in vesting the actual choice of officials in authorities other than the president—although in practice this commonly means the ministers, who in substance have it anyway. With slight exceptions, removals are made in the same manner as appointments; and in neither case is confirmation or other action by Parliament required.<sup>1</sup>

The management of foreign relations is, of course, an executive function, and on paper the president has full power in this field. Foreign ambassadors are accredited to him; French ambassadors, ministers, and envoys are appointed and instructed, and treaties are negotiated, in his name. In general, the relations between president and ministers are, however, the same in this domain as in others. It is primarily the Foreign Office that picks the men for posts abroad, prepares their instructions, negotiates treaties, and, with deference to parliamentary opinion, formulates foreign policy and carries it out. Certainly the president has no such rôle as that played by the chief executive of the United States, who—whether or not, like President Wilson, “his own secretary of state”—definitely directs the foreign relations of his country. French presidents, like British kings, have often, nevertheless, been rather influential in foreign affairs. They represent the principle of continuity in a field in which that principle is especially important; in this field, too, they are not so much hampered by the obligation of neutrality toward the political parties as in others. Grévy took a delicate negotiation with Germany out of the hands of the foreign minister and conducted it himself; Loubet had to be reminded publicly that it is the ministers, not the president, who bear responsibility for the management of external relations; while Poincaré, whose presidency (1913–20) covered the period of the World War, took an active, and sometimes a controlling, part in determining not only military, but also foreign, policy.<sup>2</sup> Presidential influence may extend to treaties, which in any event are negotiated in the chief

3. Conduct  
of foreign re-  
lations

<sup>1</sup> On the president's real power and responsibility in selecting prime ministers, see p. 497 below.

<sup>2</sup> See L. Rogers, “The French President and Foreign Affairs,” *Polit. Sci. Quar.*, Dec., 1925, pp. 546–553; also R. Poincaré, *Les origines de la guerre* (Paris, 1921), and S. Huddleston, *Poincaré; A Biographical Portrait* (Boston, 1924).

executive's name and personally signed by him. Treaties of peace and commerce, treaties which affect the finances of the state, and those which involve the personal status and property rights of French persons abroad require approval by the two chambers (not simply the Senate, as in the United States); and, with or without a treaty, no cession, exchange, or addition of territory can be made without parliamentary sanction. Extradition treaties, military conventions, treaties of alliance, and political treaties of all kinds are exempt from parliamentary control—so long as they do not require appropriations from the national treasury—and several treaties of these sorts have been withheld from Parliament in recent years.<sup>1</sup> Such agreements, however, can no longer be kept secret, because, France being a member of the League of Nations, her treaties must be reported promptly to the League secretariat at Geneva for registration.

4. Command  
of army and  
navy

What of war powers? So far as declaring war is concerned, only the two chambers can act—although it is hardly necessary to add that in conducting foreign relations the ministers may, like any authority handling international matters (the president of the United States included), bring about a situation making war inevitable. Whether in war or peace, the president is commander-in-chief of the armed forces of the nation, military and naval. Actually, of course, command lies with generals and admirals acting under the ministries of war and marine, and subject to supreme direction of the cabinet.

5. Pardon  
and reprieve

Finally, the chief executive has full power of pardon and reprieve in cases involving offenses against the national laws. Amnesties, however, can be granted only by action of the chambers.<sup>2</sup>

Legislative  
powers:

1. Control  
over parlia-  
mentary  
sessions

Turning to the legislative side, we find, first of all, the power to convoke the Senate and Chamber of Deputies in annual and extraordinary sessions, to adjourn both bodies not to exceed a month at a time (or twice in a session), and to prorogue them when their work is finished, though not until after they have been in session as much as five months. These are, of course, mainly formalities, as is indicated by the constitutional provision that the chambers shall meet every year in January

<sup>1</sup> For example, a Franco-Czechoslovak treaty of 1924 and the Franco-Belgian military convention of 1920.

<sup>2</sup> A. Esmein, *op. cit.* (8th ed.), 190-211.

whether convened by the president or not. If one were to accept the constitution's assertions concerning the president at face value, it would appear that he may also initiate legislation; and the American reader would not fail to note that the right to transmit messages to the chambers is expressly conferred. There is indubitably a large place in the system for the proposing of laws by the executive, just as there is in the British system. But, with rare exceptions, it is the ministers who propose such measures, not the president. They have seats in Parliament as do the ministers at London, and they lead in parliamentary business in much the same way, although, as we shall see, they dominate the scene by no means so completely. As for the president, he does not even send messages; there would be no point to doing so, considering that the ministers would have to write them, or at all events be willing to stand sponsor for everything said in them.

2. Initiation  
of measures

Every measure, in order to become law, must be proclaimed by the president, who indicates his approval by personally signing the decree of promulgation. Instead of proclaiming a measure within the customary month, he may send it back to the chambers to be reconsidered. If, however, they pass it again—a simple majority suffices—it must be promulgated forthwith. On paper, this suspensive veto looks to be of some importance. In practice, it is not so; indeed, it has never once been exercised. The reasons are fundamentally the same as those which long ago caused the veto power to fall into disuse in England. A veto could be imposed only on advice of the ministers. But if a measure to which they objected should reach the point where a veto would be applicable, it would mean that they had been unable to stem the tide of opposition in the chambers; and in that case they would have ceased to be ministers.<sup>1</sup> All bills duly passed by Parliament are therefore promulgated regardless of what the president thinks of them.

3. Veto

There are a good many evidences in the constitution that the implications of the cabinet system were not very clearly understood in France in 1875. One of them is the veto provision just cited. Another is the power given the president to dissolve the Chamber of Deputies only with the consent of the Senate. Disso-

4. Dissolu-  
tion

<sup>1</sup> It may be noted, however, that during the parliamentary debates on electoral reform late in 1923 President Millerand threatened to interpose a veto if a bill re-establishing single-member districts was passed. See p. 490 below.

lution of the lower branch of parliament by the titular head of the state on advice of the ministers is, of course, a familiar feature of parliamentary government everywhere. But in France alone is it required that before a dissolution shall take place the assent of the second chamber shall be asked and obtained. The result is that dissolution in that country has had a very limited history. Indeed it has been resorted to only once, and then under circumstances so opprobrious as apparently to discredit the device forever. At the behest of a monarchist group, President MacMahon, in 1877, forced the resignation of a ministry that had the Chamber's confidence, and then, acting on the advice of a new monarchist premier (the monarchist-controlled Senate concurring), dissolved the existing Chamber in the hope that the country would elect a new one favorable to discarding the republic. Instead, what happened was that the electorate returned a substantial republican majority; and in the end the president was himself compelled to surrender office. From this "Seize Mai crisis" to the present day, no Chamber has ever been dissolved. A ministry which loses support at the Palais Bourbon simply resigns; it never thinks—as an English ministry so situated commonly does—of appealing to the country. As will be emphasized in another place, this makes cabinet government in France something different indeed from what it is on the other side of the Channel.<sup>1</sup>

5. Ordinances

But if the veto and dissolution powers are thus atrophied, there is another power which is wielded with great vigor and effect. This is the power of issuing ordinances. Like all legislative bodies, the French Parliament finds it impossible to lay down full and detailed regulations on all matters with which it deals. This is not only because of shortage of time, but frequently because of lack of requisite knowledge and skill. Indeed, the chambers sometimes find it impracticable to legislate at all upon a subject which nevertheless calls for action. When the constitution was made there was already a strong tradition in France and other Latin countries in favor of "administrative legislation," *i.e.*, the issuance of regulations by the administrative authorities completing and supplementing the acts of Parliament. The constitution therefore conferred broad ordinance-making power on the president; and in later days Parliament has

<sup>1</sup> See p. 505 below.

repeatedly authorized this power to be exercised, not only in filling out and applying particular statutes, but even in issuing regulations on subjects not yet dealt with by law at all. Practically all important statutes emerging from the chambers carry clauses providing that "an ordinance of public administration shall determine the measures proper for securing the execution of the present law." The broad principles are laid down in the statute; and the details are left to be supplied by executive *décrets*, or ordinances. Scores of such *décrets* are issued every year—in the name, of course, of the president, but actually by the ministry, by an individual minister, or even by subordinate members of the administrative hierarchy. Naturally, ordinance-making was carried to unprecedented lengths during the period of the World War. But the billboards of Paris, or any other of the nation's cities, mutely testify to the place which ordinances fill in French life at any and all times. Of course it must not be supposed that this device of ordinance-making is peculiar to France. It has its place in all governments; and, as we have seen, its steady growth in English-speaking countries, including the United States, is one of the remarkable developments of our day.

Even when issued by virtue of delegated legislative power, ordinances are not law, as the French use the term. Unlike acts of Parliament, their validity may be questioned in both the ordinary and the administrative courts. Indeed, an ordinary court may, in any particular case, refuse to apply an ordinance which it considers to be in conflict with a provision of law; and the Council of State, as the highest administrative court, may, on the same ground, annul an ordinance outright. On this account, it is customary for the ordinance-making authorities to go to the Council in advance, in important cases, for its opinion on proposed decrees. In England also the courts do not hesitate to pass upon the validity of subordinate, administrative legislation; and in this respect—though no farther—there is judicial review in both countries.<sup>1</sup>

A matter that gave the makers of the constitution a good deal of concern was the president's "responsibility." Down to 1875,

<sup>1</sup> See pp. 138-139 above. The general subject of *décrets* in France is treated in A. Esmein, *op. cit.* (8th ed.), 76-116. An extensive series of significant administrative reforms in 1926 furnishes excellent illustration of *décrets* of major importance. See *Rev. du Droit Public et de la Sci. Polit.*, Apr.-June, 1927.

The presi-  
dent's re-  
sponsibility

it was commonly assumed that even in a republic having a cabinet form of government the president, as well as the ministers, must be made responsible to the legislature. The constitution of 1848 declared the president responsible, along with the ministers and all other persons entrusted with public powers, and De Tocqueville, De Broglie, and other authorities stoutly urged that presidential responsibility is an indispensable feature of republicanism. Experience in the years 1871-75 showed, however, the difficulty--indeed, the impossibility--of attaching general and political responsibility to a president with a fixed term, even when elected by the legislature. In any case, it was not feasible to maintain presidential responsibility and ministerial responsibility side by side; if responsibility is to mean anything, it must be undivided. Consequently, political responsibility of the president was gradually given up; and when the constitution of 1875 was framed, the essential object--which was, of course, to bring the acts and policies of the executive under the ultimate control of the legislature--was attained instead by specifying, first, that every act of the president should be countersigned by a minister, and second, that the ministers should be collectively responsible to the chambers for the general policy of the government and individually answerable for their personal acts.<sup>1</sup>

There was no intention, however, of giving the elected titular head of the state any such immunity as is enjoyed by monarchs, even by the British king. Hence the constitution further prescribes that the president shall be answerable on charges of high treason, and that he may be impeached by the Chamber of Deputies and tried by the Senate. In other words, his responsibility is not political, but penal. His person and his dignity are protected by statute against insult; and, like the president of the United States, he is exempt during his term of office from the processes of the ordinary courts. But, also like his American compeer, he may be brought to trial on articles of impeachment. The president of the United States can be impeached for "treason, bribery, or other high crimes and misdemeanors";<sup>2</sup> the French president can be impeached for high treason only. On the other hand, whereas the penalty that can be imposed upon an American president is confined to removal from, and disqualification

<sup>1</sup> Law of February 25, 1875, Arts. 3, 6.

<sup>2</sup> Federal Constitution, Art. II, Sec. 4.

to hold, office, no limit is fixed in the case of a French president. No president of France, however, has ever been impeached.<sup>1</sup>

In view of all that has been said about the president's position, the question arises, Why have a president at all? Socialist and other radical politicians have sometimes ventured the opinion that there really is no adequate reason. There is, nevertheless, justification for the office; and it is much the same that we have already noted in connection with the survival of kingship in England. The president personifies the unity of the nation and of the empire (France, too, has her "backward peoples" to be impressed); "permanently tall-hatted," he relieves the ministers of a considerable burden of social and ceremonial obligations; he has opportunity to render good service as an impartial, non-political counsellor; and he performs certain necessary acts, *e.g.*, selecting the prime minister, which can most readily be provided for in this way. In short, he is the titular head which cabinet government almost universally seems to require. His position, of course, is by no means the same as that of the British king. In some respects it is stronger, and in others weaker. He indeed lives in a palace and bears himself with something of the grand manner of a monarch. Nevertheless, he is only an elected official, a functionary serving for a term of years, and will presumably fall back again into the ranks of ordinary citizens. Not even during his brief stay at the Élysée is he, like the British king, the head of society. People respect his office. But there is no halo of royalty around his head; and the king has the decided advantage of a more truly unique station, the age-long traditions connected with his title and functions, his life tenure and longer accumulation of political knowledge and experience, and his more complete detachment from the hurly-burly of political life. On the other hand, the French president, unlike the king, has had an active rôle in politics and statecraft before he reached his high position; as president, he has closer day-to-day contact with the affairs of government; he sits with the ministry, and indeed presides over it, at its frequent meetings for the consideration of foreign policy, military defense, and larger administrative matters, although not at less formal sessions at which minor matters, along with questions of political policy, including party affairs, are taken up;<sup>2</sup>

Uses of the  
presidency

<sup>1</sup> A Esmein, *op. cit.* (8th ed.), 220-229.

<sup>2</sup> See p. 501 below.



and because of the number and shifting combinations of parties, he has more discretion—and more difficulty—in choosing prime ministers.

The president's varying rôle

It goes without saying that the influence which the president actually wields depends greatly upon his own capacity, his interests, his personal standing with the ministers, his personal conception of his office, and the extent to which he chooses to assert himself. President Fallières was content to leave the business of state to others and contributed little on his own account; President Poincaré, a man of affairs and of decided views, played an active rôle and supplied impressive leadership of the nation in its supreme hour of trial. Occasionally, indeed, a president so far asserts himself as to make trouble for Parliament and his ministers. The most notable instance was Millerand, who in 1922 forced M. Briand from the premiership, who developed a strong line of personal policy and harangued the country in behalf of it over the head of the cabinet, who threatened to veto an electoral bill and to resign rather than promulgate it if passed, and who at the parliamentary election of 1924 urged the people to continue the moderate *bloc* in power, and thereby so offended the victorious Radical-Socialist forces that when they took office their leaders joined in what was virtually a "ministers' strike" and refused to let the work of government go on until he had acknowledged the error of his ways by resigning. This, however, was a most unusual, as it certainly was a regrettable, chapter in presidential history.<sup>1</sup>

Proposals to increase the president's power

The unhappy experience just described undoubtedly put a damper for some time to come upon a movement which had gained some impetus to bestow upon the president a larger amount of actual power, thereby raising him to a position more comparable with that occupied by the president of the United States.<sup>2</sup> Talk of

<sup>1</sup> The fact that Millerand was forced to resign—precisely as a prime minister might be—by votes of want of confidence passed in both Chamber and Senate indicates that the idea of the president as being, after all, responsible to the chambers in a political sense has not wholly died out. But how otherwise could a chief executive who had so clearly overstepped his constitutional bounds be got rid of? Impeachment was not feasible, because, however grave M. Millerand's offense, nobody could very well allege that it constituted "high treason." On Millerand's view of the presidency when he took office in 1920, see T. Barclay, "Monsieur Millerand and his Programme," *Nineteenth Cent.*, Nov., 1920. Cf. W. L. Middleton, *The French Political System* (London, 1932), 199–203.

<sup>2</sup> Even before 1924, the idea of remaking the presidency on the American model

abolishing the presidency and transferring its more indispensable functions to some kind of executive council had pretty well subsided. But many people, especially of conservative temperament, thought that matters ought not to go on as they were. It was unreasonable to hope that men of caliber would seek or accept an office in which they would be expected merely "to hunt rabbits and not to govern"; besides, the presidency might be made a useful counterweight to an increasingly radical Chamber of Deputies.

The difficulty was, however, that no one could figure out a way of giving the president larger power without withdrawing power in corresponding degree from the ministers, and ultimately from Parliament as well. Real power for the president must mean the right to direct and control the ministers, as the American president directs and controls his heads of departments. This, of course, would make them responsible to him. But how could they be responsible both to the president and to Parliament? The prime requisite of parliamentary government is supreme control of affairs by parliament itself; and such control necessarily includes unrestricted power to hold the ministers to account. They cannot serve two masters; a government cannot be half parliamentary, half presidential. The reformers' proposals were therefore tantamount to asking that the pages of history be turned back to the first years of President Thiers—that both the form and spirit of the French government as arduously developed through a half-century be discarded for something different.

The chances that this would be done seemed remote. A constitutional amendment would presumably be required, and it was fair to suppose that neither senators nor deputies, however devoted in a general way to the principle of separation of powers, would relish any change tending to erect the titular chief executive into a rival authority. Furthermore, political elements on the left, considering the popularly elected legislature their strongest and surest instrumentality, could be depended upon to raise objection, very much as, and for the same reason that, they oppose judicial review. On the other hand, growing im-

suffered a decided set-back from President Wilson's memorable fight with the Senate over ratification of the Versailles treaty. For obvious reasons, this dramatic spectacle was viewed in France with profound interest; and while sympathy was strongly with the president, the conclusion was forced that constitutional arrangements opening a way for such conflicts are not to be desired.

patience with legislative bodies the world over, evidenced in France by greatly increased criticism of Parliament, developed in post-war years an atmosphere decidedly more favorable to strong executives. Dictatorships arose on all sides; and when, early in 1934, France was swept by a political crisis of the first order, complaint was made particularly of the fickleness and ineptitude of Parliament and demand voiced for strengthening the executive, especially in the direction of parliamentary dissolution. Any resulting change on this or other lines seemed likely, however, to strengthen rather the position of the cabinet as working executive than that of the president himself.<sup>1</sup>

<sup>1</sup> On the French presidency in general, see the works of Esmein and Duguit already cited. The matter of presidential powers is treated at length in G. de Lubersac, *Les pouvoirs constitutionnels du président de la république* (Paris, 1913); and a lucid, if not altogether convincing, argument for an increase of powers will be found in H. Leyret, *Le président de la république* (Paris, 1914). Other useful references include J. Bryce, *Modern Democracies* (New York, 1921), I, 225-231; A. Cohn, "Why M. Fallières Is an Ideal French President," *Amer. Rev. of Revs.*, July, 1908; R. H. Soltan, "The Present Position of the French President," *Economica*, May, 1921; J. W. Garner, "The Presidency of the French Republic," *N. Amer. Rev.*, Mar., 1913; and especially E. M. Sait, *op. cit.*, Chap. ii; W. L. Middleton, *op. cit.*, Chap. ix, and H. Finer, *op. cit.*, II, 1128-1144.

## CHAPTER XXIV

### NATIONAL ADMINISTRATION

If one were asked to characterize the government of France with telegraphic brevity, he could hardly do better than reply: Highly centralized administrative control exercised through executive departments presided over by ministers responsible to a parliament elected by the people. He might go on to explain that of the two main principles involved, one, *i.e.*, administrative centralization, is a heritage from the Napoleonic régime and the other, *i.e.*, ministerial responsibility, an importation from England. Still further, he might say that the French administrative system is not only the most imposing but also the most influential in the world, even though the French people themselves find in it a good deal to criticize and arm-loads of books have been written to show wherein it could be improved. In an age belatedly learning the true importance of administration as a branch or phase of government, France has much to offer.

A major French contribution to government

At the outset, one finds, as he would expect, that the entire national administrative system heads up nominally in the president of the Republic, but actually in the ministers. The president, to be sure, has considerably more to do with administration than does the king in England. He has a good deal of actual discretion in selecting the prime minister; by custom, he presides over and otherwise takes active part in meetings of the *conseil de ministres*, in which larger matters of national policy are discussed and *décrets* on multifold subjects decided upon; and he exercises as much personal surveillance as he likes over the conduct of public business by the officials, high and low, of the departments. Nevertheless, as in other countries with cabinet governments, the work of administration is supervised and directed by the officials who alone are answerable to Parliament for it, *i.e.*, the ministers.

The ministers as the chief administrative authorities

This being the case, one might expect a good deal to be said in the national constitution about these officials, and perhaps about the departments over which they preside. Earlier French

Constitutional basis of the ministry

constitutions contained detailed provisions on the subject, that of 1795 going so far as to stipulate that the ministries should number not fewer than six nor more than eight. The fundamental law of today is, however, conspicuously silent on the subject. True, the little that it says is significant, chiefly, (1) that "every act of the president shall be countersigned by a minister"; (2) that "the ministers shall be collectively responsible to the houses for the general policy of the government, and individually for their personal acts"; and (3) that "the ministers shall have entrance to both houses, and shall be heard when they request it."<sup>1</sup> In the first two of these passages, remarks Professor Munro, "in thirty-three words, is an attempt to set down the essential principles of cabinet responsibility as they have slowly evolved in England during a period of several hundred years."<sup>2</sup> Authority for the existence of a council of ministers, or cabinet, must, however, be deduced merely from the provision for collective responsibility; the constitution makes no direct allusion to such a body. On matters of lesser moment, the fundamental law is equally silent. It does not say how many ministries, or departments, there shall be; it does not specify what posts shall be deemed of ministerial rank; it makes no provision for creating departments or abolishing them. These omissions, to be sure, are not to be deplored; the matters mentioned hardly belong in a fundamental law. Nevertheless, the way has been left open for a great amount of controversy concerning the establishment of new ministerial departments.

Establishment of new ministries, or departments

For upwards of fifty years, the method was simply that of executive decree; whenever the ministry felt that an additional department was needed, it procured an order creating one, and Parliament had nothing to do with the matter beyond making such appropriations as were required.<sup>3</sup> In the United States, executive departments are established only by act of Congress, and in Great Britain nowadays (although by no means in all cases formerly), by act of Parliament. In France, long-standing complaint of abuses arising from arbitrary juggling of departmental organization and functions, reinforced by dissatisfaction

<sup>1</sup> Law of Feb. 25, 1875, Arts. 3, 6; Law of Feb. 24, 1875, Art. 6.

<sup>2</sup> *The Governments of Europe* (2nd ed.), 420. Similar provisions are found in most written constitutions of Continental Europe.

<sup>3</sup> The only exception was the creation of the colonial ministry by statute in 1894.

with the way in which war-time governments added to and otherwise modified administrative services at will, led Parliament in 1920 to pass an act stipulating that thenceforth no new ministries, under-secretaryships, or even division-chiefships, should be created, nor any functions transferred from one ministry to another, except by statute. On several occasions subsequently, however, the law has been evaded; at all events, Parliament still repeatedly finds itself "establishing" new ministries only in the sense of making financial provision for departments already called into being by executive order.<sup>1</sup> As illustrated by the difficulty with which, even under the driving impetus of enforced economy, the president of the United States, in 1932, was endowed with qualified power to carry out a reorganization of the national administration,<sup>2</sup> there is in all governments a tendency to conflict between the desire of the executive to determine the machinery through which it shall function and that of the legislature to keep the matter under its own control.

Starting at nine in 1875, the number of ministries reached 12 by 1914, and—except during the early stages of the World War, when it rose to 21—it has in later years varied from 14 to 18. The 18 now in existence are: (1) Foreign Affairs; (2) Interior; (3) Justice; (4) Finance; (5) Budget; (6) War; (7) Marine; (8) Air; (9) Public Instruction and Fine Arts; (10) Posts and Telegraphs; (11) Public Works; (12) Public Health; (13) Commerce; (14) Merchant Marine; (15) Agriculture; (16) Labor; (17) Colonies; and (18) Pensions. In the main, the functions of each are indicated by its title. The Ministry of the Interior, however, which an American might presume to be similar to the department of the same name in his own country, is quite a different affair, being concerned, not with public lands and reclamation and education, but with correlating and supervising the work of local government and administration throughout the Republic. No department wields greater power—at all events on political

The existing  
ministries

<sup>1</sup> Thus the air ministry, created in 1928, was in operation two months before receiving retroactive statutory sanction.

<sup>2</sup> P. Hurt, "Who Should Reorganize the National Administration?" *Amer. Polit. Sci. Rev.*, Dec., 1932. Under emergency conditions, and in the "honeymoon" stage of a new Administration, Congress, in 1933, acted upon a similar presidential request in a more liberal fashion. But such a change of heart could hardly be expected to last.

lines—and it is not strange that on many occasions the prime minister has selected the interior portfolio for himself. Although listed officially in the order indicated above, the ministries are legally coördinate, as are the ten executive departments in the United States. On the other hand, they are strikingly unlike the American departments in being organized in such a fashion as to include, in one or another of their number, all of the regular national administrative services. In the United States, as is well known, many such services are carried on by commissions or other agencies, such as the Interstate Commerce Commission and the Federal Trade Commission, which stand entirely outside of the ten departments. The number of ministers, it should further be observed, is not always the same as the number of departments. Sometimes—though not often save in war-time—ministers “without portfolio” are appointed; on the other hand it occasionally happens that a single minister for a time holds two portfolios simultaneously.

How a new  
ministry is  
made up:

1. The premier

The constitution does not say in so many words how ministers shall be appointed, but this is because they clearly come within the scope of the president's power to “appoint to all civil and military positions.” In form, the procedure is the same as in Great Britain: the titular head of the state names a political leader to be prime minister;<sup>1</sup> the latter draws up a list of persons for the various posts and submits it to his chief; the list is accepted as a matter of course and published; whereupon the new ministers are sworn in and enter upon their duties. Actually, however, the process differs considerably in the two countries. In Britain, as we have seen, the king normally has no discretion in the matter; when a ministry resigns, its chief indicates to the sovereign the man who, as recognized opposition leader, is entitled to be invited to form a new government, and the invitation is extended as a matter of course.<sup>2</sup> In France, where parties are not only numerous but continually forming and reforming and grouping themselves in ever-shifting *blocs*, and where no party is ever strong enough to command a majority

<sup>1</sup> Technically, in France, “president of the council of ministers.” The term “premier” (French equivalent of “prime minister”) is, however, in common use.

<sup>2</sup> As explained elsewhere (p. 322 above), the rise of the Labor party has upset the traditional bi-party balance and might conceivably put the king in a position to exercise some choice as between two opposition party leaders having about equal claim. But the chance of this occurring is fairly remote.

in the Chamber of Deputies and make up a ministry single-handedly, there may easily be no one outstanding leader with superior right to recognition, but rather a half-dozen or more leaders having almost equal claim. In this situation, the president may well have some freedom of selection. If he is wise, he will not, of course, decide arbitrarily. Rather, he will advise with persons best informed on the political situation—the presiding officers of the Senate and Chamber of Deputies, committee chairmen, and various party leaders themselves—and, in the light of the information received, make up his mind as to what he should do. The problem may resolve itself rather easily. But again it may not. It is of no use to name a man who cannot build a combination that will command parliamentary support. The leader first invited may refuse. Another may accept, only to find that he cannot make headway. Not infrequently, the post is tendered to three, four, even half a dozen, men in succession before the right one is discovered. Needless to say, during the week or more sometimes required to straighten out such a situation, the president rises to a position of supreme importance in the government and bears a heavy load of responsibility. Furthermore, such occasions come frequently. In the seven years of President Doumergue (1924-31), 15 new ministries were set up and abortive attempts were made to form five others. Still more extraordinary, the “government of national union” organized under the premiership of Doumergue when ex-president, in February, 1934, was the eighth ministry that the country had known since the defeat of Pierre Laval’s first one scarcely more than two years previously.

Having consented to try his hand at forming a ministry, a presumptive premier sets to work to select his colleagues and assign them to the various posts. A British leader, similarly situated, has difficulty enough, even though normally expected to pick men only from his own party. A French cabinet-builder will usually find the going hard indeed. Not only must he deal with persons of differing and often incompatible temperaments, but he must distribute places and pledge himself to policies in such fashion as to secure the coöperation of usually as many as three or four ambitious and jealous parties and groups. Perhaps he can complete the task in a few hours; but usually days are

2. The other  
ministers



required to reveal whether he can accomplish it at all.<sup>1</sup> If he fails, he will not be premier. Throughout the period of his efforts, the Parisian newspapers tell in rapidly appearing editions of his hurried visits to the homes of prominent politicians, of his interviews, *pourparlers*, overtures, and solicitations, with daily summaries of his triumphs and disappointments. If in the end he succeeds, he goes with his list to the president of the Republic, who again comes into the picture long enough to approve it.<sup>2</sup> If he fails, some one else is invited to make the attempt, and the process starts all over again. Even after the president has acted and the list has been sent to the *Journal Officiel* for publication, some group may change its mind and by withdrawing upset the combination. Still further, everything will be undone if the new government, upon first appearing in the Chamber of Deputies, is unexpectedly denied a vote of confidence. More than once it has happened that a leader whose initial efforts were unsuccessful has tried again with better luck after others had failed and the political atmosphere had somewhat cleared.<sup>3</sup>

Such are the hazardous circumstances under which a new ministry in France is put together. How does it work while in office? More specifically, what relations exist between the premier and the colleagues he has chosen? How do they function in their collective capacity? What is a minister's position

<sup>1</sup> It has been computed that the average length of ministerial "crises" is five days.

<sup>2</sup> In rare instances, he may refuse to endorse a nomination which he particularly dislikes. Clemenceau could never get into a ministry as long as Loubet was president. On the other hand, President Poincaré in 1914 felt obliged to put the stamp of approval on Caillaux, whom he strongly distrusted.

<sup>3</sup> Ministers are commonly, although not invariably, selected from among members of Parliament, chiefly the Chamber of Deputies. Formerly, the portfolios of war and marine were filled with high officers of the army and navy who were innocent of parliamentary experience, and as late as 1920 the Millerand ministry contained three non-members. Nowadays, however, the practice is substantially as in Great Britain, and for identical reasons. Even if not a member, a minister has a right to attend sittings of both houses in order to make statements, answer questions, and take part in debate—which, of course, is not true across the Channel. The proportion of ministers belonging to the Senate tends to decrease, and in most recent governments has not exceeded one-fourth. There is never any lack of *ministres*, i.e., deputies (and occasional senators and even outsiders) who aspire to become ministers and have some, even though slender, claim to consideration. Once a minister, even though for but a day, a politician has the pleasure of hearing himself referred to for the rest of his life as *ancien ministre*. On the personnel of French ministries from 1871 to 1930, see note by J. G. Heinberg in *Amer. Polit. Sci. Rev.*, May, 1931, pp. 389-396.

in his own department, and over what sort of departmental organization does he find himself presiding?

Viewed from afar, the relations between the premier and the other ministers are much the same as in England. The chief minister has put his associates where they are; he has only to make a formal request of the president of the Republic to secure the removal of any or all of them; and while he is by no means endowed with the constitutional paramountcy enjoyed by the German chancellor,<sup>1</sup> he can assert as vigorous leadership as he likes and compel any minister to stand by him or resign. This, at all events, is the situation on paper, precisely as it is in England. In practice, some important differences appear. A French ministry is, as a rule, far more difficult to lead than is an English one. Instead of being a fairly homogeneous group of men belonging to a single party, it, as we have seen, is a loose-knit combination representing one party predominantly but also one or more other parties, pieced together with difficulty and permeated with opinions and ambitions often next to impossible to reconcile. Precariously situated at best, its life will be brief indeed unless matters are handled adroitly. Possessed of full disciplinary power, the prime minister rarely dares exercise it—certainly not in any arbitrary or autocratic manner. Instead of commanding, threatening, and compelling, he must, for the most part, argue and persuade—and often surrender. Otherwise his house of cards will topple to the ground. Obviously, much will depend upon the premier's personal qualities and those of his associates, as well as upon the general political situation at any given moment. But it is a rare prime minister at Paris who holds the whip-hand in any such fashion as does a British cabinet head. Ex-President Poincaré, as premier in 1928-29, is one of the few that can be cited. To a degree, the French premier strengthens his position by taking for himself one of the portfolios carrying the greatest amount of power. Sometimes, as in the case of Briand during seven of his eleven premierships, he is foreign minister; sometimes, as in the instance of Painlevé in 1917, he is minister of war; but often he takes the portfolio of the interior, which gives him a wide sweep of authority over not only much of the national administrative machinery, but local government and the conduct of elections as well. In Great

The premier  
and his col-  
leagues

<sup>1</sup> Even before the rise of the Hitlerian dictatorship. See pp. 714-718 below.

Britain, the prime minister can afford the luxury of a titular office like the first lordship of the Treasury, but not so in France. A premier who is simultaneously head of one of the major departments is, of course, a heavily burdened man; but he needs the power and prestige that a portfolio confers.<sup>1</sup>

M. Poincaré  
on a minister's daily  
duties

Some impression of what it means to be a minister may be gained from the following account by the highly experienced M. Poincaré: "The conscientious minister has his day well filled. In the morning, when he enters his study, he finds a formidable mass of correspondence on his desk. The correspondence which is not addressed to him privately is, of course, opened and examined by employees, but a large number of letters remain which he is compelled to read through. Most of these come from senators or deputies, who have acquired the annoying habit of recommending candidates for every species of post. Shortly before nine o'clock, the minister gets into his coupé or motor-car, the coachman or chauffeur of which wears a tricolor cockade. He is driven to the Élysée if there is a council of ministers, or to the ministry over which the president of the council presides if there is to be a cabinet council. The Council sits till midday. On days when it does not sit, the minister receives officials or members of Parliament. There is an interminable procession of people soliciting favors. After lunch, the minister goes to the Chamber or the Senate. When he returns, he finds all the desks and tables in his office loaded with great portfolios, crammed with every kind of document. There are letters or proposed decrees prepared by the different services of his department and awaiting the ministerial signature. If he does not choose to sign them blindly, he must spend long hours looking into the different affairs. He then receives the chief officials of the ministry, who come to discuss the more delicate matters of current business. To acquit himself decently of a task so heavy and so varied, it is not enough to possess

<sup>1</sup> It is to be observed, however, that he *may* decide to take no portfolio at all. Under war-time conditions, Viviani in 1914 and Clemenceau in 1917 held none, nor did Poincaré in 1928-29. But this does not often happen. The premier receives the same salary as all of the other ministers, *i.e.*, 180,000 francs a year, and, like the others, resides as a rule in quarters provided by the state in one of the huge and in most cases richly decorated department buildings on the left bank of the Seine, inherited from the Bourbons. Only the Minister of the Interior is definitely required to live in the building used by his department.

method; lacking a great aptitude for work and a rare promptness of judgment, he will be merely the plaything of Parliament or the tool of his departmental bureaux." <sup>1</sup>

This flash of the spot-light upon a minister's daily routine serves excellently to suggest the two-fold rôle that he is called upon to play. On the one hand, as a member of the ministerial group, he shares in the collective work of the council of ministers and of the cabinet. On the other, as an individual administrator, he directs the affairs of the department over which he has been placed in charge. We are concerned at this point chiefly with the administrative system, and therefore with the minister in his second capacity, and with the services, central and exterior, over which he presides. Before going on with this matter, however, something must be said of the heads of departments from the viewpoint of their group responsibilities and activities.

The minister's dual rôle

In the passage quoted above, M. Poincaré speaks of the ministers as being whisked from their desks now to a meeting of the council of ministers and now to a sitting of the cabinet council; and he indicates that in the one case their destination is the Élysée and in the other the office of the premier. The difference between the two gatherings is significant. The council of ministers meets, as a rule, twice a week, with the president of the Republic in the chair; and much business pertaining to appointments, *décrets*, and general policy—particularly as related to foreign affairs and national defense—is transacted. Only in this way can most important decisions of the government be validated and given effect. The cabinet council, on the other hand, is a gathering of the ministers only, with the premier in the chair. It convenes once a week or oftener; and while it cannot issue decrees or perform other executive acts, it considers most of the questions which eventuate in such acts, and, in particular, discusses and decides upon legislative policies, parliamentary tactics, and other matters having to do with the ministry's efforts to keep itself in power.<sup>2</sup> In other words, the

The council of ministers and the cabinet

<sup>1</sup> *How France Is Governed*, 198-199.

<sup>2</sup> Meetings of both bodies are strictly private. Actions taken in the ministerial council are reported to the press, and in any event usually result in duly promulgated decrees. Cabinet proceedings, as in Great Britain, commonly become known only as information leaks out. As in Britain also, a cabinet secretariat made its appearance during the World War. It, however, has since become merely a small stenographic force for the personal use of the premier; and, contrary to present British practice, no permanent records are kept.

council of ministers, though having to do also with policy, is primarily an executive body, like the king-in-council in Great Britain, while the cabinet council is to a greater extent a policy-framing political body, *i.e.*, much as the *cabinet* also is on the other side of the Channel. It goes without saying that since France is governed according to the principles of the cabinet system—a system working very differently, to be sure, on the Seine and on the Thames, yet the same in its underlying concepts and objectives—it is the ministers as cabinet officers, rather than as members of the ministerial council, that chiefly require our attention.

Some features of the cabinet:

Responsibility

The salient feature of cabinet government is, of course, the responsibility of the ministers to an elective parliament; and the French fundamental laws of 1875 explicitly provide for such responsibility in the following language: "The ministers shall be collectively responsible to the houses for the general policy of the government, and individually for their personal acts." Elsewhere, the fundamental laws make ministers liable to impeachment by the Chamber of Deputies, and to "trial by the Senate, for crimes committed in the performance of their duties"; and ministers have occasionally been impeached, removed from office, and banished or otherwise punished for offenses which they had personally committed.<sup>3</sup> The responsibility envisaged in the clause quoted is, however, not penal but political, *i.e.*, the sort of responsibility that arises from the unwritten but clearly implied rule that ministers may remain in office only so long as their management of affairs meets with parliamentary endorsement. The rule is, in general, the same as that which operates in the British system, upon which, indeed, it originally was patterned. One highly important difference, however, appears. In Britain, as in cabinet-governed countries commonly, ministers are responsible to the lower house of Parliament alone. But in France, according to the constitutional phraseology above quoted, they are responsible to both houses. It is true that some French constitutional lawyers take the view that the architects of the constitution did not really expect, or even

<sup>1</sup> Law of February 25, 1875, Art. 6.

<sup>2</sup> Law of July 16, 1875, Art. 12.

<sup>3</sup> Sometimes, too, proceedings are brought against them after they have left office.

intend, that the ministers should be responsible to the Senate. They say that the phrase "responsible to the *chambers*" was current in the reign of Louis Philippe; that in practice ministers were then responsible only to the lower house; and that neither in the debates in the National Assembly of 1871-75 nor in the political literature of the time is there indication of any intention to give the phrase a different meaning. This, however, seems a somewhat forced interpretation, based on negative evidence, and suggested mainly by the fact that in actual practice ministerial responsibility has worked out in the Third Republic substantially as in the Orleanist monarchy and in cabinet governments elsewhere. It is a considerable assumption to say that the National Assembly wrote "*chambers*" but meant "*chamber*"; and there are first-rate French authorities who hold that the ministers are, and were meant to be, responsible to the Senate and Chamber of Deputies in precisely the same manner, both bodies being (contrary to the case in Orleanist France and in Great Britain) elected directly or indirectly by the people.

The question of what was intended is now somewhat academic. The matter of main importance is how the system actually operates; and as to this the facts are, happily, fairly clear. Without shadow of doubt, the Senate can address inquiries and interpellations to the ministers, introduce amendments to government (including money) bills or reject them outright, appoint commissions of inquiry, and adopt votes of censure or "no confidence," precisely as does the Chamber of Deputies. It has done all of these things many times. Furthermore, on at least four occasions it has been definitely instrumental in forcing a ministry from office. In 1896 it passed, five times within three months, a vote of want of confidence in the Bourgeois ministry, and at last practically compelled it to resign by refusing an appropriation until there should be "a constitutional ministry possessing the confidence of the two chambers." In 1913, by rejecting an electoral reform measure sponsored by a Briand ministry and endorsed by the Chamber of Deputies, it caused the ministry to resign. In 1925, a strong and pugnacious Herriot ministry, and in 1930 an equally vigorous Tardieu ministry, was upset from the same quarter, in both cases by express vote of censure. Still further, more than one premier, *e.g.*, Poincaré in 1923 and Daladier in 1933, has gone before a refractory Senate

Actual rôle of  
the Senate

telling it that unless it acquiesced in the government's program on a given matter, he and his colleagues would throw upon it the onus of subjecting the country to the inconvenience of a change of ministries. Though somewhat numerous, these, however, have been distinctly exceptional occurrences. Manifestly, cabinet government would break down if ministries were actually required to be equally answerable at all times to two separate bodies which are elected at different dates and in different ways and dominated much of the time by different party groups; and in practice the situation is saved for France by general acquiescence in the principle that normally a ministry shall remain in office so long as it enjoys the confidence of the lower house. Accordingly, although obliged to give more heed to opinion in the upper chamber than is necessary in Great Britain, ministers stand in much the same relation to the more democratic branch as in that country.

2. Lack of  
solidarity

✓ A point at which more actual difference appears is in respect to the cabinet's unity or solidarity. In Britain, the cabinet - and for that matter the ministry as a whole - is composed normally of persons belonging to a single party and presumed to be in substantial agreement on all important matters of principle and policy. The presumption is often belied by the facts. Nevertheless, a ministry tries to conceal any internal differences that may exist, and thus to put up a united front in Parliament and before the country. In France, such solidarity—even in appearance—is usually impossible. In the first place, as has been observed, all ministries are of necessity coalitions. They may be ministries of the Right or of the Left, or of Right-Center or Left-Center. But in any event they contain men drawn from a number of different parties or groups. Precariously built into a cabinet, these men differ in many of their principles and are actuated by various more or less opportunistic motives. Even if they were personally minded to hang firmly together, the groups behind them are full of dissentients who make dependable support impossible, and indeed may shift position or even dissolve completely almost overnight. The average French cabinet, therefore, has about as much stability as the proverbial house of cards. Premier Combes put it mildly when he admitted to the Chamber thirty years ago that the cabinet does "not pretend to realize an absolute homogeneity." Solidarity is lacking also

in that, whereas in Britain, responsibility has now for a good while been regarded as definitely collective, French practice, backed up by express constitutional provision, recognizes it as both collective and individual. In the one country, a ministry stands or falls as a unit; in the other, it is no uncommon thing for an individual minister, under fire in the Chamber or Senate, to be thrown to the wolves by his colleagues. It is going rather far to say, with Professor Finer, that political practice has "virtually deleted the words 'collectively responsible' from the constitution."<sup>1</sup> But there can be no question that the accountability of a French cabinet member to Parliament is of a more personal, or individual, nature than anything known under the British system.

The divergent sources from which they are drawn and the fickleness of their parliamentary support would of themselves explain why French cabinets rarely last long. There are, however, additional reasons. One of them is the fact, already noted, that even when a cabinet commands adequate support in the Chamber of Deputies it may come to grief through opposition in the Senate. Another is the circumstance that, although entitled to ask the president to dissolve a hostile Chamber of Deputies in order to clear the way for the election of a new and perhaps more friendly one, a French cabinet never thinks of doing such a thing. In the first place, under the French constitution no such dissolution is permissible without the consent of the Senate, which sets up a restriction totally unknown to cabinet government elsewhere. In the second place, on the one occasion when a dissolution actually occurred, *i.e.*, in 1877, the device was brought into lasting disrepute by being employed in a boldly conceived effort to upset the republic in favor of a restoration of monarchy.<sup>2</sup> Cabinet government without dissolutions is a most unusual thing. Nevertheless, that is exactly what France has. And of course it means that when an important government bill is defeated or a policy blocked, or a vote of no con-

3. Short  
tenure

<sup>1</sup> *The Theory and Practice of Modern Government*, II, 1050.

<sup>2</sup> President MacMahon, himself a monarchist, arbitrarily dismissed the republican premier, Jules Simon, named the monarchist Duc de Broglie as his successor, and, finding the Chamber of Deputies hostile, obtained the consent of the monarchist Senate to a dissolution. The new Chamber, however, proved republican, and the formation of a republican cabinet by Dufaure brought the *Seize Mai* crisis to an end. See G. Hanotaux, *Contemporary France*, III, Chap. ix, and IV, Chap. i.



fidence passed at the Palais Bourbon—as will usually be the case before a multi-party cabinet has long been in office—there is nothing for the ministers to do but resign. The Chamber of Deputies invariably lasts out substantially its full legal term of four years; when conflict develops, it is always the ministers who give way.<sup>1</sup>

4. Elements  
of continuity

The upshot is a kaleidoscopic succession of ministerial “crises” which is the despair of those who are called upon to chronicle them and the provocation of no end of uncharitable remarks from even well-informed students of government who, like the somewhat censorious Bodley, rush to the conclusion that because the French cabinet system does not work like the English it is no true cabinet system at all. Between 1870 and 1932—a period of 62 years—France had a total of 81 cabinets, with an average life of only a little more than nine months.<sup>2</sup> Of the 81, only 18 lasted as long as one year, and none longer than two years, eleven months, and eleven days.<sup>3</sup> During the same period, Great Britain had 18 cabinets, lasting an average of almost three and one-half years. From the close of the World War to midsummer of 1933 (a period of less than 15 years), Great Britain had seven cabinets, Germany 15, France 23. The natural inference would be that government in France is little more than a succession of starts and stops, of rapid, sudden, and bewildering shifts of policy, with no end of confusion and waste. It would, indeed, be so but for two saving circumstances. One is the fact that, in France as in Britain and everywhere else, the great bulk of government work is carried on continuously by the non-political departmental staffs and is but little affected by changes of party or of personnel in the high offices. The other circumstance is that changes of ministry flow in nearly all instances from “crises” that are merely personal and parliamentary, not national, and are both in form and effect merely reconstructions. Ministerial

<sup>1</sup> The political crisis of February, 1934, brought into much prominence an oft-heard proposal—warmly endorsed by Premier (and ex-President) Doumergue—that the power of parliamentary dissolution be strengthened and brought into actual use. A chief means to this end was considered to be the repeal of the clause of the constitution which forbids dissolution of the Chamber without consent of the Senate.

<sup>2</sup> Different writers reckon the number somewhat variously, according to whether certain ministries of only a few days' duration are regarded as merely attempts to form a government.

<sup>3</sup> The Waldeck-Rousseau cabinet of 1899-1902.

changes in Great Britain are real changes; that is to say, one set of ministers goes out of office and a completely different set comes in.<sup>1</sup> In France—as in Continental multi-party countries generally—this seldom happens. Individual ministers come and go without disturbing the status of the others; and when a ministry resigns as a whole, one can almost depend upon it that a good many of its members will reappear in the succeeding one. It is not off with the old and on with the new, but usually only a matter of rearrangement—of dropping out ministers who, because of failing parliamentary support, have become liabilities, taking in others who have followings willing to work with a reconstructed government, reshuffling portfolios according to the requirements of a changed situation,<sup>2</sup> with quite possibly the former premier reappearing at the head of the new government, or even in charge of some department under a new premier.<sup>3</sup> As Professor Munro has said, the Chamber of Deputies may vote to overturn a ministry one day and within 48 hours give its confidence to a new ministry composed of almost the same individuals, perhaps with the same prime minister at their head.<sup>4</sup> Undeniably, the shifting character of French ministries interferes somewhat with continuity of public policy and with the stability of administration, especially in the higher levels. The effects are by no means so serious, however, as one acquainted with merely the surface manifestations might suppose; by and large, they do not extend beyond a slight edging of the government now to the right and again to the left.

Such are some interesting aspects of French ministries con-

<sup>1</sup> There are, of course, occasional minor reconstructions, as, for example, in September, 1932.

<sup>2</sup> Any French political leader who long remains in public life is likely to find himself at the head, at different times, of at least three or four different departments.

<sup>3</sup> As a single illustration may be cited the second ministry of Pierre Laval which in January, 1932, followed the first after an interval of 24 hours and differed from it only by not including the previous foreign minister, M. Briand.

<sup>4</sup> *The Governments of Europe* (2nd ed.), 429. M. Briand achieved the extraordinary record of being a member of 24 different cabinets—in 11 instances as premier. The reasons for the gyrations of French ministries are to be found largely in the party situation, described in Chap. XXVII below. For an illuminating discussion of the subject, see L. Rogers, "Ministerial Instability in France," *Pol. Sci. Quar.*, Mar., 1931. Cf. H. Finer, *The Theory and Practice of Modern Government*, II, Chap. xxiv; E. M. Sait, *Government and Politics of France*, Chap. iii; and Lord Bryce, *Modern Democracies*, I, Chap. xxi. J. Echeman, *Les ministères en France de 1914 à 1932 suivi d'un tableau des ministères* (Paris, 1932), is a useful compendium.

The minister  
and his de-  
partment

sidered in their collective capacity. Others will come to light when we look further into the workings of the parliamentary system.<sup>1</sup> Meanwhile, what of the minister's position in his particular department? How is a department organized internally? What of the civil servants through whom the departments function in Paris and throughout the land? The inquirer who sets out to study departmental organization in France is aided greatly by one happy circumstance: structurally, the departments are all substantially alike. British executive establishments present so many different patterns that they can hardly be described except one by one. Our ten departments at Washington are more similar, yet also show a good deal of diversity. In France, a native fondness for symmetry and regularity has produced a series of ministries or departments so much alike, not only in general appearance, but in actual structure and workings, that unless one is delving into the minutiae, a single description will serve for all.

Theoretical  
and actual  
position

At the top of the departmental pyramid stands the minister himself. In theory, he is the supreme authority, selecting and controlling his subordinates, making all final decisions, answering all important questions, shouldering responsibility for everything that is done. It does not take long, however, for an incoming department head to learn that the theory and fact of the situation by no means coincide. He discovers that the power of appointment (wielded, in any event, in the name of the president of the Republic) is limited by rules and customs requiring fitness of candidates, and by both the legal and practical necessity of leaving the mass of his subordinates undisturbed. He finds, too, that his power to make decisions is narrowly restricted by his unfamiliarity with most of the matters that come up, by lack of time to gain such familiarity, by the customary latitude enjoyed by the permanent officials in the department, and by limitations flowing from decisions previously arrived at by the ministry as a whole. In other words, the average minister finds himself in substantially the same position as a British cabinet officer—a novice surrounded by experts in the persons of the divisional chiefs and other non-political subheads in the department—so that on most matters he can do nothing but follow the lead of those who know. His mornings, as has appeared, must be spent in meetings of ministerial council or cabinet and in consultation

<sup>1</sup> See Chap. XXVI below.

with individual ministers and members of Parliament and with private persons who are seeking favors for themselves or for their friends. His afternoons are occupied with parliamentary duties, meetings of committees, preparation of speeches, and other activities having little or nothing to do with actual administration. Yet he must at least go through the motions. As evening approaches, "letters and documents of all kinds, representing the labors of the department bureaux for the day or for several days, are hurried to his private office to be signed. The officials wait impatiently and anxiously in the ante-chamber. If he does not sign, the whole business of the department will be suspended. . . . The official says to the minister, not in words, but in his very attitude: 'Here is an order which you have not given; it refers to matters which, to all appearance, you know nothing about. We conceived it before your advent; we will execute it after your departure. But we need your signature, and, without it, can do nothing.'" <sup>1</sup> In nine cases out of ten, the signature is forthcoming—with probably only a very general notion on the minister's part of what it is all about. Nevertheless, the responsibility is his; and if questions are asked in the Chamber or Senate, he must be prepared to answer them, or at all events to see that some one connected with the department does so.

The most obvious means of relieving a minister whose departmental burden has grown unbearable would be to provide him with special assistants who should take over designated parts of his work; and this has been done in the case of several of the principal departments. Under-secretaries first appeared, indeed, in some of the ministerial establishments as long ago as 1816. At first, they had only administrative functions as assigned to them by their superiors. But in time they began appearing in the chambers to explain and defend ministerial acts, which tended to give them a political as well as an administrative character; and such is their nature today. Their number varies under successive ministries, rising as high as 12 during the World War, but more recently not exceeding half that figure. Though sometimes referred to as "ministers of the second grade," they are not actually ministers and have no authority either to issue ministerial decrees or to countersign presidential acts. Never-

The under-  
secretaries

<sup>1</sup> E. M. Sait, *Government and Politics of France*, 104-105. Cf. Lord Bryce, *Modern Democracies*, I, 263.

theless, they attend and take active part in meetings of the council of ministers, and when the ministry to which they are attached resigns they go out of office with it. Selected, as a rule (like the ministers themselves) from among members of Parliament, they (again like their chiefs) are entitled to appear and be heard on the floor of either chamber. In a general way, they resemble the parliamentary, as distinguished from the permanent, under-secretaries in Great Britain.<sup>1</sup>

The departmental cabinet

Pursuing farther the arrangements found in a department, one next comes upon a feature which has no analogy in either British or American practice, *i.e.*, the department "cabinet." The theory in France is that the department head has need of assistance and advice coming neither from the under-secretaries (if any), who are not general assistants and advisers but rather subchiefs in charge of particular branches of departmental administration, nor yet from the permanent staff, which is itself a group to be watched and controlled; and the need—if it be one—is supplied by a small number of persons whom the department head, with no express warrant from either the constitution or the laws, gathers around himself primarily on the score that they are friends in whom he has confidence and who share his ideas. Designated as chief, assistant chief, secretary, and attachés, and picked in many instances mainly from among the minister's own relatives, or at all events from young men willing to serve merely for the prestige to be gained (as a rule, no salary is paid), these persons frequently wield considerable influence as confidential agents and advisers. Even French observers are bound to admit, however, that as the device works there are disadvantages in it. One of these is the resentment often aroused on the part of the permanent officials, who naturally dislike being "shadowed" and reported upon by mere novices. Another is the fact that, while a minister's cabinet goes out of office with him, he commonly succeeds in slipping most of the number into the permanent service—even by resorting to special decrees to open paying positions for them—and frequently into places which they have tried in vain to reach by competitive examination.

The permanent staff

All of the departmental officials thus far mentioned are of a political, and therefore transitory, character. There is, however, a permanent staff, without which—especially in view of the

<sup>1</sup> See p. 83 above.

rapidity with which ministries rise and fall—all administration would indeed suffer perpetual chaos. This permanent staff starts (at the top) with the *directeurs* of the *directions*, i.e., directors of "services" into which the work of each department is divided. As a rule, there are four or five such services—purchasing, accounting, personnel work, etc.—in a department. The directors, who are assisted by subdirectors, meet from time to time, under the chairmanship of the minister, as a "council of directors," and they represent their respective services on various advisory committees having to do with administrative work. Their principal business, however, is to supervise the four or five *bureaux* into which each *direction* is divided. In the bureau, we reach the basic unit in the departmental organization—the place where administrative work proper, as distinguished from direction, begins. Each has a *chef de bureau*, or chief, assisted by subchiefs; and under these are *redacteurs* (clerks) and numerous other subordinates, arranged in grades or classes. The whole gives the effect of a perfect pyramid, with the minister at the peak and with authority converging uniformly inward and upward. So self-contained, however, are the various units, viewed laterally, that the functionaries of one bureau or service commonly know little of what is going on in the others. Taken as a whole, the average department notoriously lacks anything approaching genuine integration.<sup>1</sup>

Directors, subdirectors, bureau chiefs and their assistants, clerks, and the rest belong to the huge establishment known as the civil service; and to it our attention must be turned as this chapter draws to a close. Two or three major French traditions supply necessary setting for the picture. The first is that of centralization. Not only has France a completely unitary form of government, as is also true of England, but, unlike the latter country, it has inherited from earlier régimes and maintains to this day a scheme of organization under which no semi-autonomous local jurisdictions are permitted to interfere with direct and immediate control of the national government over all of the people. To be sure, there are—as in the nature of things there must be—areas of different names and forms for purposes of local government and administration. But departments, *arrondissements*, and communes have been created by, or exist on

The civil service: underlying traditions

<sup>1</sup> W. R. Sharp, *The French Civil Service* (New York, 1931), 32-42.

sufferance of, the central government at Paris; their affairs are regulated minutely from the capital; they swarm with functionaries who belong, not to any local or regional, but solely to the national, civil service. A second tradition, coming down from the days of the Bourbon monarchy, is what the French themselves call *étatisme*, a term next to impossible to translate, but denoting a veneration for the state (as made visible in the national government) amounting almost to worship, and entailing a virtually unrestricted right of the state to regulate both individual and collective enterprise. A third tradition, for which again there is no analogy in English-speaking countries, is that it is the business of the state not only to supply and administer the more usual services, such as police and highways, but to promote the arts and sciences—to maintain whatever universities are needed, to build and subsidize opera-houses and theaters, and in general to serve as custodian and director of the national culture.

#### Numbers

With these and related traditions still dominant, it is not to be wondered at that the French civil service is a colossal, complicated, and costly affair. Precisely how large it is numerically, no man can say; for even if there were agreement on the marginal categories, *e.g.*, part-time employees, to be included, the astonishing fact would remain that complete statistics of the service have never been compiled.<sup>1</sup> An American investigator who a few years ago pursued the subject as far as it seemed possible to go computes that on the eve of the World War there were on the national pay-roll some 465,500 civil servants (*fonctionnaires*<sup>2</sup> and employees), exclusive of employees of state railways, and on local government staffs some 350,000 more. The war expanded the former number by a third, and in 1927 it was estimated as being still no less than 547,148, with the number of local government employees remaining near the pre-war figure. The total today is thus in the neighborhood of 900,000, or, as the authority cited reminds us, somewhat over two per cent of the country's population.<sup>3</sup> The national service, with its approximately 550,000, is decidedly larger than the British (around 300,000), and,

<sup>1</sup> W. R. Sharp, *op. cit.*, 14.

<sup>2</sup> This term is not always used with precisely the same meaning, but in general it denotes persons on the staffs of the central government who belong to what may be termed the permanent service with fixed monthly salary.

<sup>3</sup> W. R. Sharp, *op. cit.*, 19.

indeed, not far short of the figure for the United States (608,915) in 1930. Foreign observers commonly consider it excessive, and in France itself there is no little complaint, especially of the cost. It must be noted, however, that the number includes 120,000 school teachers, besides other groups who in both Britain and the United States are on local, not national, pay-rolls.

Like Britain, France has never known a spoils system such as was once the curse of the American civil service. She veered toward that sort of thing during the famous contest between President MacMahon and the republicans half a century ago, when first the monarchist reactionaries sought to monopolize the offices and afterwards the republicans, on regaining the upper hand, sought, by what was euphoneously called an *épuration*, to purge the service of "enemies of the republic." The circumstance that commonly throughout the history of the Third Republic no one party has ever been able to dominate the government or the Chamber of Deputies has, however, prevented patronage from being captured and distributed by a single party organization or primarily on party lines at all. There has been patronage, and abuse thereof—plenty of it. But it has been largely of a personal nature, taking the form most commonly of solicitation by senators and deputies of posts for friends and supporters among their constituents, such favors being sought at the hands of ministers and prefects as rewards for continued support at the polls and in Parliament. Nowhere has pressure of this kind been employed with more telling effect. It is true that since the World War the supply of candidates for places has fallen off, and that some types of posts have actually gone begging. In general, however, employment in the public service has been widely sought, notwithstanding the meagerness of salaries and the often dreary character of the work to be performed; and insatiable demand, coupled with the practical advantage to a politician of having plenty of places at his disposal, is one of the reasons why the number of functionaries remains so high.

Recruitment:  
the problem  
of a merit  
system

Starting actively with a comprehensive order in council of 1870, Great Britain, as we have seen, has brought substantially all positions in the national employ, except a few of necessarily political character in the topmost levels, under a system of recruitment by competitive examination, promotion for merit, and

Nature of  
present reg-  
ulations



tenure during good behavior. Beginning with the Pendleton Act of 1883, the United States has done the same thing for approximately 75 per cent of its national service. France has proceeded differently. The country still has no general civil service law, and no central examining and certifying board tantamount to a civil service commission. There are, indeed, a few statutes on the subject. The army and navy, the judiciary, and the university professors have been guaranteed security of tenure and immunity from political interference. Outside of these professions, however, recruitment, classification, promotion, and tenure are regulated, not on a general, nation-wide basis, but department by department and service by service, each branch of administration—even the individual bureau in a department—being regarded as an essentially autonomous unit for all personnel purposes. Notwithstanding some effort to procure a comprehensive, nation-wide law, the method of regulation is still that of executive order; and while the council of ministers occasionally issues such orders (*décrets*) for the benefit of the entire service, most regulations (known technically as *arrêtés*) emanate only from the minister for his own department, or even, on minor matters, from a *directeur* or bureau chief for his own particular administrative division. In the aggregate, the rules thus made are numerous; and in both the central service at Paris and the “external” service throughout the country they have wrought a great deal of improvement by introducing competitive examinations, providing means of securing promotion for merit, and making tenure more secure. Indeed, they are gradually bringing the nation to something approaching a general civil service code.

One will hardly need to be told, however, that reform has proceeded very unevenly in the different departments and subdivisions, with the result that employees in one branch, although doing the same kind of work, may be on quite a different footing from those in another. Moreover, the policies pursued within any given department are subject to sudden and arbitrary change. When a new minister takes charge, he may scrupulously maintain, and even tighten up, the regulations of his predecessors in the interest of high standards. On the other hand, he may relax, suspend, or even abrogate them, subject only to such safeguards as are laid down in ministerial decrees of general application. There have been instances in which an incoming department

head suspended a rule long enough to enable his hangers-on to slip into coveted posts and then revived it without the transposition of a comma. Though this sort of thing is growing less frequent, the service as a whole still suffers from the lack of any single water-tight system of merit guarantees.

So far, nevertheless, has reform been carried that, apart from the local areas known as departments, there is not a branch of the national administrative establishment in which major personnel is not recruited, at the base at all events, by open competition.<sup>1</sup> Within broad limits fixed by statute, decree, and administrative jurisprudence, the nature and management of competitive tests are determined for each ministerial department, and as a rule for each individual departmental division, by a personnel bureau attached thereto, with the result that examinations are taking place at all times through the year, some in Paris, others in cities and towns scattered over the country. For every examination, a special board of examiners, selected ordinarily by the chief of the personnel bureau concerned, and mainly from persons already in the service, is set up, with duties which terminate when the results have been duly ascertained and reported. Though not followed invariably, a favorite form of examination is a written preliminary, followed by an oral final taken by such candidates as have cleared the first hurdle. A list of the successful examinees, arranged in the order of merit, is reported to the appointing authority; and, unlike the situation in the United States, it is rare that a person who is certified does not receive a place. Examinations for posts of higher grade are designed quite as largely as in Britain to test the candidate's intellectual attainments and dimensions; those for clerical and other minor positions are aimed rather at measuring ability to do specific kinds of work, on lines more characteristic of American examinations. In the past twenty years, women have been admitted to the service far more freely than previously; and in compliance with insistent demand from Parliament, extensive preference is given to war veterans and their widows. Promotions in the service are nowadays based less on formal examination than used to be the case. Within certain restrictions, they are determined by the appointing officer, guided though not altogether limited by an annual *tableau d'avancement* drawn up

Some further  
aspects of  
personnel

<sup>1</sup> W. R. Sharp, *op. cit.*, 122.

for each department or subdivision by some stipulated authority therein.

Pay and pensions

Handicapped by the lack of any permanent personnel agency with powers of central supervision over all branches of the service, by an earlier tradition that civil servants must find their reward partly in the prestige which came to them, and more recently by chaotic conditions flowing from fluctuations of the currency, France has been slow in arriving at any general formula for correlating duties and compensation across office and departmental lines and according to the principle of equal pay for equal work. Much thought has been expended on the problem since 1920, but as yet with unimportant practical results. Though subjected to numerous more or less piecemeal readjustments in the effort to keep pace with rapidly shifting currency valuations and cost of living, salary scales in the various establishments are still unstandardized and generally low. A reasonably liberal system of retirement pensions helps, however, to maintain the attractiveness of the service for a people to whom nothing brings quite so much satisfaction as a sense of security for oneself and one's family.

Organization of public employees

Some fifty years ago, members of the civil service began forming staff associations aimed at securing higher pay, surer promotion, and better working conditions generally. To a considerable extent, the movement was inspired by aggressive leaders of syndicalism in private industry, who looked toward the ultimate merging of all governmental with industrial functions and operations; and the earlier organizations of postmen, arsenal workers, and state railway employees not only took the form of *syndicats*, but were created with a view to active affiliation with organizations of workers in private industry. This line of policy raised difficult questions with which the government has never ceased to wrestle more or less inconclusively. Should public officials and employees be permitted to form corporate organizations at all? If so, should such organizations be allowed to affiliate with industrial labor unions? What should be the attitude toward any asserted right to strike?

When the first associations appeared, they—and for that matter the organizations in private industry as well—were clearly illegal. A statute of 1884, however, cautiously opened the door to organization in private industry; in 1899, certain postal employees were

expressly authorized to organize; and a memorable Law of Associations in 1901, though specifying numerous restrictions, was generally construed as giving civil servants the same "freedom of association" that their comrades in private industry enjoyed. The further questions mentioned above, however, gave successive ministries no end of trouble. When staff associations began to seek affiliation with the General Confederation of Labor, every effort was made to discourage and prevent them; and when, in 1910, the workers on state railways, emulating the arsenal workers in 1904 and the postal employees in 1909, undertook a nation-wide strike, Premier Briand stifled the effort by the extraordinary expedient of calling the strikers into the military service of the nation. Notwithstanding these measures, the associationist movement continued to spread, until on the eve of the World War nearly two-thirds of all public employees in the country, local as well as national—over 600,000 out of a total of between 800,000 and 900,000—were members of some kind of association or *syndicat*.

One will not be surprised to learn that the effect of the war and of post-war chaos was to impart to civil servant organizations a more radical slant. Whereas before 1914 the proportion of genuine syndicalists was small, in 1919 the general confederation of civil servant organizations formally incorporated the term *syndical* into its official name (*Federation des Syndicats de Fonctionnaires*) and voted to join the General Confederation of Labor. The decade that followed was marked by little less than a state of warfare between the government and the employee organizations, broken by periods of more sympathetic attitude during the Herriot administrations of 1924-25 and June-December, 1932; and at the date of writing (1934) the tension has by no means been relieved. On the one hand, the government is willing to concede the legality of *syndicats* whose membership is restricted to employees of a single department or service performing similar functions, while refusing to sanction any federation of groups in different services, federations with groups in other countries, or affiliation with organizations of employees in private industry; and of course it recognizes no right of public employees to engage in strikes. On their part, the *syndicats*—at all events their more radical elements—stoutly insist on full statutory recognition of their legality, and on unlimited freedom to effect

solidarity of action across departmental lines and with their comrades in the industrial world, both French and foreign. "At its best, the *status quo* is an unstable equilibrium—a truce, as it were, between the strong arm of state authority and the organized numerical force of those who man the public services. At its worst, it occasionally becomes guerilla if not open warfare."<sup>1</sup>

<sup>1</sup> W. R. Sharp, *The French Civil Service*, 476. This volume is easily the best treatment of the civil service of France in all of its aspects. See also L. D. White, *The Civil Service in the Modern State* (Chicago, 1930), 213-279, and H. Finer, *The Theory and Practice of Modern Government*, II, Chaps. xxix, xxxii, and succeeding chapters *passim*. Of French books on the subject, A. Lefas, *L'État et les fonctionnaires* (Paris, 1913), and G. Cahen, *Les fonctionnaires* (Paris, 1911), though by no means up to date, are most worthy of mention.

## CHAPTER XXV

### CHAMBER OF DEPUTIES AND SENATE

If a highly centralized administrative system, with extraordinarily large powers of regulation by decrees, is characteristic of France, no less so is the nation's devotion to the principle of political democracy. To be sure, this principle finds somewhat more cautious application than in a number of other countries. Women have not been granted the suffrage; senators are not elected directly by the people; the president of the Republic is chosen, not by popular vote, but only by the senators and deputies. Nevertheless, despite much criticism of it by radicals and reactionaries alike, democracy as a form of polity has won fuller acceptance than in any other major portion of Continental Europe.<sup>1</sup> The instrumentalities through which it functions include the elected assemblies, or councils, of local areas, *i.e.*, communes, districts or *arrondissements*, and departments; they include also Parliament, which enacts laws, levies taxes, appropriates money, and controls administration for and in the name of the nation as a whole. Parliament is the paramount agency of representative government in France no less than on the opposite shore of the Channel.

A country  
devoted to  
political  
democracy

Upon the break-up of the Estates-General in 1789, France definitely abandoned the mediaeval type of national assembly organized on the basis of "estates" or "orders." For almost a hundred years longer, however, she wavered between two contrasted parliamentary forms or structures. During the Revolution, ultra-democratic reformers saw to it that their parliaments, actual or proposed, consisted of but a single house. Conservatism having regained ground, the constitution of 1795 introduced a second, or upper, chamber. To this arrangement succeeded the irregular legislative régime of Napoleon I; but under the Constitutional Charter of 1814 the two-house principle was revived and continuously adhered to for thirty-four years. The legislative organ of the Second Republic (1848-52)

The bicam-  
eral plan  
adopted

<sup>1</sup> C. J. H. Hayes, *France; A Nation of Patriots* (New York, 1930), 24.

was a unicameral assembly. But the Second Empire saw a Senate erected; and throughout the reign of Napoleon III the legislative chambers were nominally two in number, although only in 1870 was the Senate made coördinate with the *Corps Législatif*.

Down to 1875, experience with the two forms of organization failed to give convincing proof of the superiority of either, and in adopting the new constitutional laws of that year the National Assembly gave much time and thought to the subject. The radical followers of Gambetta, and many other republicans, strongly preferred the unicameral plan. But the monarchists (particularly the Legitimists), and conservatives generally, wanted an upper chamber as a check upon democracy and a bulwark of propertied interests. They argued, too, that such a body would be a barrier against revolution; and the rejoinder that the device of two chambers had not prevented the Napoleonic *coup d'état* of 1799 fell of its own weight for the reason that many of the monarchists would have been willing enough to see something of the sort happen again. English and American precedent pointed also in the direction of bicameralism. But the plan was adopted, in the last analysis, because the conservative elements insisted on it, and because the bulk of the republicans did not care to jeopardize the new constitution by adhering too stubbornly to their own preferences. Accordingly, the Law on the Organization of the Public Powers started off with a provision that "the legislative power shall be exercised by two assemblies: the Chamber of Deputies and the Senate."<sup>1</sup> Men who voted this clause could have had only a very general idea of the effects which the decision was destined to have upon the workings of the country's parliamentary system.

Two coördinate, yet differing, bodies

Many of the world's parliaments today are more truly bicameral in form than in fact; two chambers exist, but one has most of the power while the other contents itself with criticism and revision. This, as we have seen, is the situation in Great Britain; it is equally such in the British dominions and in most of the European states having constitutions adopted since the World War. In France, however, the two branches of the legislature were meant to be, and are in fact, coördinate, like the two houses

<sup>1</sup> In point of fact, the law on the Organization of the Senate had been adopted on the previous day. "The constitution of 1875," as M. de Belcastel remarked, "is first of all a Senate." Quoted in E. M. Sait, *Government and Politics of France*, 124.

of the American Congress. No measure can become law without being passed by both; any bill except a money bill may be introduced in either; revenue and appropriation bills are freely amended by the second chamber; upper house as well as lower may, and does, upset ministries. Nowhere, indeed, except in the United States are the branches of a national representative body nowadays so evenly balanced. As in the United States, too, the Senate has—in addition to its equal share of legislative power—certain functions peculiarly its own. One is the right to give or withhold its consent to a dissolution of the Chamber of Deputies before the end of its natural term. Inasmuch as under French practice dissolutions are never asked for, this has only potential importance. Another special senatorial function, however, which is from time to time actually exercised is that of serving as a high court of justice “to try the president of the Republic or the ministers and to take cognizance of attempts upon the safety of the state.”<sup>1</sup> In cases of impeachment, the Chamber prefers the charges; in cases of attempt upon the security of the state, the ministry; in both instances, the Senate hears the evidence and brings in the judgment.<sup>2</sup> There is, however, no senatorial confirmation of appointments as in the United States; and treaties, if submitted to Parliament at all, require action by the two houses alike.

It has sometimes been a subject of astonished remark that whereas one of the three constitutional laws of 1875 was devoted almost entirely to defining the composition of the Senate, those instruments can be scanned from end to end without disclosing anything on the structure of the Chamber of Deputies beyond the laconic provision that the members “shall be elected by universal suffrage, under the conditions determined by the electoral law.”<sup>3</sup> It is not, however, strange that the matter should

The Chamber of Deputies:

1. Constitutional and legal basis

<sup>1</sup> Law on the Organization of the Senate, Art. 9.

<sup>2</sup> When sitting as a court, the Senate has full power to summon witnesses, punish persons who refuse to appear, administer oaths, and obtain evidence by every means that can legally be employed by an ordinary court. In the nature of things, the Senate is not often called upon to discharge this function, the most notable instances in recent years being the trial of a former minister of the interior, Louis J. Malvy, in 1918, of ex-Premier Joseph Caillaux in 1918-20, and of Senator Raoul Peret in 1931. On the Senate as a court, see A. Esmein, *Éléments de droit constitutionnel* (8th ed.), II, 521-536.

<sup>3</sup> Law on the Organization of the Public Powers, Art. 1.



have been left thus. The nature, and even the existence, of the Senate was a bone of contention, and controversy over it naturally resulted in definite decisions which were written into the fundamental law. A lower branch chosen directly by the people was, however, assumed from the start. There was nothing to be settled concerning it except such questions as who should be permitted to vote, what electoral areas should be employed, and how the elections should be conducted; and these were matters which—since obviously they would require readjustment from time to time—might best be left to regulation by ordinary law. An American would have expected at least the term of service of deputies to be specified in the constitution. Under the cabinet system as it was expected to operate, however, the Chamber would be subject to dissolution at any time, and at the most all that would presumably be required on this score was the fixing of a maximum period, like the seven (present five) year period in Britain, for the life of any parliament that contrived to escape dissolution at an earlier stage of its existence. As is well known, the Constitution of the United States leaves many aspects of the structure of the House of Representatives to be regulated by act of Congress, or even, as in the matter of the suffrage, partly or wholly by action of the individual states. Even in the case of the Senate, France, in 1884, lifted all provisions concerning structure out of the constitution and placed them on the basis of statute law.<sup>1</sup> Before the National Assembly adjourned in 1875, preparatory to the launching of the new constitutional régime, it passed a comprehensive electoral law, under which, as amended and supplemented on several later occasions, the composition of the Chamber is now determined, together with the electoral process generally.<sup>2</sup> As we shall see, most of the newer legislation has had to do with changing the nature of the electoral districts, although some has been aimed at promoting electoral fairness and purity.

2. Present  
composition

As it stands today, the Chamber of Deputies numbers 615 members—180 more than the American House of Representatives, and, curiously enough, the same figure exactly as in the case of the British House of Commons. Of these, 596 represent

<sup>1</sup> See p. 469 above.

<sup>2</sup> The law of 1875 is reprinted in H. L. McBain and L. Rogers, *The New Constitutions of Europe*, 534-540.

single-member districts in France proper (including 25 sitting for districts in the annexed territory of Alsace-Lorraine), nine come from Algeria (which is considered an integral part of France), and ten are elected in the overseas colonies.<sup>1</sup> Unlike Britain, France endeavors to carry out frequent reapportionments with a view to equality of electoral power for equal numbers of people. The ideal, however, has never been attained in more than very rough fashion, for the reason that, though reapportionments are always made in advance of an election if a census (coming at five-year intervals) has been taken since the last election, the electoral districts are in the main formed, not *ad hoc* and irrespective of areas utilized for other purposes, but of departments, *arrondissements*, or subdivisions or combinations of such local government units, commonly having rather widely differing numbers of inhabitants. With a population that grows but slowly, it would seem that it ought to be comparatively easy to hold down the membership of the Chamber to a figure compatible with the highest legislative efficiency; and at certain reapportionments the number of seats has actually been reduced. A large Chamber, however, is rooted in tradition;<sup>2</sup> politicians naturally favor such; localities are unwilling to give up electoral importance to which they have grown accustomed; and as a result the assemblage in the Palais Bourbon is now rivalled among national legislative bodies only by the British House of Commons and the German Reichstag. A deputy represents, on the average, 70,200 people, as compared with the 78,000 represented by a British Commoner at Westminster, and 282,000 (under the reapportionment of 1931) by a congressman in the United States.

The full membership of the Chamber is elected simultaneously for a four-year term. Earlier French constitutions prescribed terms of two, three, five, and even six years. But the authors of the electoral law of 1875 compromised on four; and the figure has fully justified itself. Some people consider that it would be better if the American House of Representatives were chosen for a period of similar length. Theoretically, the Chamber may be dissolved at any time by the president of the Republic, with the assent of the Senate. Actually, there has been only one

3. Term of service

<sup>1</sup> Protectorates, such as Morocco and Tunis, are not represented.

<sup>2</sup> The Chamber started, in 1876, with 533 members. Earlier French representative bodies were even larger.

dissolution (in 1877) appreciably in advance of the end of the four-year period,<sup>1</sup> and every newly elected Chamber can look forward with assurance to filling out substantially its full quadrennium. As a result, parliamentary elections normally take place in France with almost the same unvarying regularity as congressional elections in the United States, though only half as frequently—*normally*, however, rather than invariably, for the reason that, the term of members being a matter of statute only, Parliament sometimes finds it convenient to extend the life of a given Chamber somewhat beyond four years, as it did in 1893 and again in 1923 in order to throw the elections in the spring of the year, and also in 1918 in order to avert an election in war-time. The argument has sometimes been advanced that with a view to greater continuity in the Chamber it would be better if half of the members were chosen every two years. The Senate, with a nine-year term, is renewed by thirds biennially, and it is asked why the same principle should not be applied to the other branch. The usual reply is that under a cabinet system of government it is essential that the chamber which has the power to make and unmake ministries shall be completely and instantly responsive to the will of the nation; which means that when dissolutions take place, with a view to determining whether the people are behind the ministry or the chamber, the entire electorate should have an opportunity to express itself simultaneously. The argument—which certainly holds for most countries having cabinet government—is, of course, weakened for France by the fact that actually there are no dissolutions. There is much to be said, however, on general principles for bringing into session from time to time at least one parliamentary branch which mirrors the opinion of the whole nation at a given moment.<sup>2</sup>

Qualifications of members

Deputies are required to be voters (which presumes citizenship) at least twenty-five years of age, and to have complied with the law regarding military service. But that is all. Members

<sup>1</sup> See p. 505, note 2, above.

<sup>2</sup> It may be noted that in 1888 the Floquet ministry, and in 1910 the first Briand ministry, sponsored a plan extending the life of a Chamber from four to six years, with one-third of the members elected every two years; that in 1902 the Chamber, and in 1913 the Senate, voted for a six-year term, but without concurrence on either occasion; and that bills of similar purport have made their appearance since the World War.

of families who at any time have reigned in France are disqualified, and there are many public offices (though a considerably smaller proportion than in Great Britain) which are legally "incompatible" with membership. Otherwise the doors are open. In the absence of any residence requirement, a good many deputies are found sitting for districts in which they do not live. French voters, however, do not take so kindly to non-resident representation as do English voters, partly because they are more inclined to look upon their deputy as an emissary to procure favors for the district; and it often happens, as in the United States, that good men who lack adequate political support in the locality of their residence are obliged to give up a parliamentary career, or are unable to secure entrance upon such a career at all.<sup>1</sup> Women, not being voters, are of course ineligible. Socialists have long urged a law forbidding any minister or member of Parliament to be connected with a business establishment which holds government contracts or concessions, and also making bankers and railway magnates ineligible to sit in either chamber. Parliament has as yet gone no farther, however, than to prohibit, in 1928, acceptance by members of either house of any position as director, administrator, or controller of an industrial, commercial, or financial establishment during their terms.

Deputies are elected by direct vote of the people. In Britain, as we have seen, there is one set of qualifications for participating in parliamentary elections and a somewhat different one for taking part in the election of county and borough councillors and members of other local bodies. In the United States, too, one finds differences of electoral requirements, which hold for national as well as for other elections as one goes from state to state. In France, on the other hand, there is a single electorate, defined by national law, for all public purposes; if one can vote in a parliamentary election, one can vote also in a local election, and vice versa. Four definite requirements are laid down: (1) the voter must be of the male sex; (2) he must be at least twenty-

The election  
of deputies:

1. The suffrage:

<sup>1</sup> Professor André Siegfried, well known in the United States, writes: "After completing my university years, I desired to choose politics as a career, and accordingly tried to secure a seat in the Chamber of Deputies, but after renewed efforts it appeared to be impossible; in the constituencies of my own town my tendencies probably did not fit, and in every other constituency I was considered a stranger." *France; A Study in Nationality* (New Haven, 1930), p. v.

one years of age; (3) he must be a French citizen, in possession of full civil rights; and (4) he must be duly registered. Tax-paying requirements long ago disappeared, and of educational, or literacy, tests there has never been a trace. There are, of course, certain disqualifications. Bankrupts, persons under guardianship, soldiers and sailors in active service, and persons who have been judicially deprived of their civil rights may not vote. All told, however, the Republic has one of the most liberal suffrage systems in the world—for men. For France, "universal suffrage" has always meant "manhood suffrage."

a. The problem of woman suffrage

Almost alone among European states, France experienced no suffrage changes as a result of the World War. She has today, however, two suffrage problems, one major, the other minor though potentially important. One will hardly need to be told that the major question is that of giving the ballot to women. Although there is hardly another country in which individual women, such as Marie Antoinette and Madame Roland and the Empress Eugénie, have exerted so much influence on the course of public affairs, French women in the mass have never acquired any political status. They cannot vote in a parliamentary or local election; they cannot be chosen to a town council or any similar body; they cannot serve on a jury; until a few years ago, they could not even act as witnesses at weddings. A woman suffrage movement got under way near the opening of the century—about the time when the "suffragettes" of Great Britain entered upon the most intense and dramatic stage of their campaign. But whereas the stimulus of the war served to carry the British movement to victory in 1918, effort in France has thus far fallen short of its goal. To be sure, starting in 1919, the Chamber of Deputies has several times (most recently in 1932) passed a woman's suffrage bill, or added a rider on the subject to some general electoral bill. On every occasion, however, the Senate—when it deigned to consider the proposal at all—has voted unfavorably; and though the movement is well organized and ably led, it still has a high hurdle to surmount in that body. Even yet, the majority of French women instinctively shrink from the idea of participating in politics. No doubt they will some day become voters. Until they show a livelier interest, however, the innate conservatism of most Frenchmen in respect to such matters, combined with the fear of radical

political elements that if women are enfranchised, the Catholic clergy will regain its former power in civil affairs, can be depended on to keep political authority, as now, in masculine hands.<sup>1</sup>

To an Englishman, long troubled by the problem of doing away with plural voting, it might well come as somewhat of a shock to learn that in France, where no form of plural voting has ever prevailed, it is seriously proposed to introduce something of the kind. Yet such is the case. No one suggests giving a man more than one vote because of property that he may own or occupy. But supporters have arisen for a plan under which heads of families would be given extra votes bearing some relation to the number of their children, *e.g.*, one such vote for each child under age, on the theory that such persons have more at stake in the policies of the government than do others—though there is also an idea that the device might do something to stimulate the birthrate. When first broached, the proposal drew ridicule as merely a “crank idea.” Later, however, it won more tolerant consideration; and though there is no prospect at the moment that it will be adopted, the Chamber of Deputies has more than once debated it, an extensive literature on it has grown up, and no discussion of suffrage matters proceeds far before *le vote familial* at least comes in for mention.<sup>2</sup>

b. “Family voting”

The terms on which the suffrage is exercised are fixed by national law. Responsibility for keeping and annually revising the electoral lists falls, however, to the authorities of the smallest unit of local government, the commune; and, as has been indicated, the same lists serve for elections of all kinds—communal, district, departmental, and national. The work is actually done in each commune by an electoral commission consisting of the mayor, an appointee of the communal council, and an appointee of the prefect of the department, without any effort or responsibility on the part of the voter, yet with opportunity for appeal to the commission (enlarged by two members for the purpose),

2. Registration of voters

<sup>1</sup> J. Barthélemy, *Le vote des femmes* (Paris, 1920), is a brilliantly argued case for the enfranchisement of French women. Cf. A. Leclerc, *Le vote des femmes en France* (Paris, 1929). It is worthy of note that in another of the larger Latin countries, *i.e.*, Spain, women gained the ballot in 1931.

<sup>2</sup> The best brief exposition of the subject is R. K. Gooch, “Family Voting in France,” *Amer. Polit. Sci. Rev.*, May, 1926. A recent French discussion is E. Haraca, *Sur le vote familial* (Paris, 1930).

and ultimately to the administrative courts, if any one is dissatisfied because of being overlooked or held ineligible. No one can vote without being registered; and one gets his name on the list in a given commune by (1) having resided in the commune for six months before the annual registration is closed on March 31, (2) showing that, notwithstanding residence elsewhere, the commune is his real domicile, or (3) proving that he has paid direct taxes in the commune for a period of five years. A voter can be registered in several communes, but may vote at any given election in only one, under heavy penalty.

3. Voters  
and non-  
voters

On the whole, Frenchmen take their electoral duties seriously. The proportion of the total eligible electorate that went to the polls at general elections between 1876 and 1928 varied between 69 and 83.6 per cent, which compares favorably with the showing regularly made by British voters and decidedly so with the records established in the United States.<sup>1</sup> There is, however, enough non-voting to have stirred discussion and criticism. Falling at stated intervals, elections—national as well as local—sometimes take place during periods of political tranquillity, when, according to all experience, fewer persons will turn out to vote. Changes in the electoral system, such as the adoption of a partial scheme of proportional representation in 1919, also puzzle people and lead some to stay away from the polling places. Other voters may be deterred by unwillingness to support some *bloc* or alliance to which the leaders have sought to pledge them. Furthermore, unlike Great Britain and practically all of our American states, France makes no provision for absent voting, which undoubtedly accounts for still other abstentions.<sup>2</sup> And of course there are always people who are politically indifferent or positively out of sympathy with "parliamentarism" and unwilling to lend their aid in keeping it going. In general, voting is heaviest in urban rather than rural areas, and in sections where the parties of the Left are strongest; and in the absence, to a large degree, of local party agencies such as are depended on to get out the vote in Great Britain and the United States, persons who have to be induced to go to the polls are looked after chiefly by the priests,

<sup>1</sup> See p. 199, note 1, above.

<sup>2</sup> For the benefit of refugees from the invaded areas, absent voting was permitted in the elections of 1919, and certain groups were similarly favored in 1924. But the plan has not established itself as a regular feature of the electoral system.

by mayors, municipal councillors, schoolmasters, and other government officials and employees, by landed proprietors, and by other individuals of influence and power in the community. These are, of course, people with more or less of an interest in the outcome; and with a view to stimulating the voter as a matter of abstract principle, without reference to political motivations, both absent voting and compulsory voting have many times been proposed. As previously stated, absent voting was experimented with in 1919 and 1924, but at present has no place in the system. Compulsory voting was included in a comprehensive electoral bill of 1932 which passed the Chamber but met defeat in the Senate on other grounds.<sup>1</sup>

Upon the way in which candidates for seats in the Chamber are selected it is not easy to speak with precision. There is no single method; some candidates are not really "selected" at all, but only self-announced. The matter has never appealed to the French as of sufficient moment to call for extensive regulation, and nothing in the nature of the American convention and primary systems has developed. Originally, there was no law on the subject at all. In 1889, it was forbidden that a man should stand as a candidate in more than one electoral district at the same time, and as a means of checking up it was further provided that in order to be reckoned a legitimate candidate one must, at least five days before a given election, deposit with the prefect of the department within which the polling was to take place a simple declaration, witnessed by a mayor, naming the constituency from which he proposed to seek election. A statute of 1919 which recognized both group (or party-list) and independent candidacies in the newly formed multi-member districts continued this arrangement for the former, but required in the case of the latter the filing of a nomination paper bearing the signatures of at least one hundred qualified voters. When, however, in 1927, the country reverted to the single-member-district system, this novel form of nomination by petition disappeared. Nowadays, some of the parties having more effective organization—notably the Radicals, Radical-Socialists,

4. The nomination of candidates

<sup>1</sup> H. F. Gosnell, *Why Europe Votes* (Chicago, 1930), Chap. ii, and references there cited. On compulsory voting, see a report by Professor Joseph Barthélemy in *Rev. du Droit Public et de la Sci. Polit.*, Jan., 1923, advocating a law which would punish failure to vote by a fine of five francs for the first offense, five per cent of the offender's income tax for the second, and disfranchisement for the third.



Socialists, and Communists—have rules concerning candidacy and some local machinery for choosing candidates under supervision of the national organization. But many candidates, especially of the less stabilized parties, continue to be put up only by local self-constituted caucuses, with nothing even remotely resembling the control wielded by the central party machinery in Great Britain. The number of candidates—3,735 at the election of 1928 and 3,617 at that of 1932—is always large.<sup>1</sup>

5. The electoral campaign

A parliamentary election takes place on a date—always Sunday—fixed by presidential decree; and the decree must be issued at least twenty days before the election is to be held. This might be taken to mean that the campaign is crowded, as in Britain, into a period of not more than three weeks. The approach of an election, however, is as definitely known months in advance in France as in the United States, and the canvass for votes, although naturally more vigorous during the so-called “electoral period,” is by no means confined to it. To a larger extent than in earlier days, the appeal to the voters is carried out according to plan and by concerted effort. Especially is this true in the case of the parties, mentioned above, which have some approach to genuine nation-wide organization. And this enables large national issues to get somewhat of a hearing. The typical campaign is still, however, that carried on by the individual candidate largely with his own resources and in his own way, aided, of course, by his local friends and supporters. He issues his own *profession de foi*, or platform, stresses issues or arguments which he thinks will most appeal to the people whose votes he seeks, and in doing so oftentimes wanders far from the principles or programs of the political group at Paris with which he is ostensibly identified. Disciplinary power of party organizations over candidates is growing, but still has far to go before attaining the level reached in Great Britain, Germany, and the United States. The personality of the candidate continues to count for decidedly more than in Britain; it is to this that the voter looks rather than to the organization—if indeed any organization worthy of the name exists.

6. Campaign expenditures

The art of campaigning is largely the same everywhere, yet with interesting national variations. French candidacies are

<sup>1</sup> At the election of 1932, the district of St. Gironde, in the department of Ariège set a high-water mark with 85 candidates for a single seat.

floated on floods of oratory, especially in the rural districts. The press is used extensively; and radio broadcasting, though turned to political uses somewhat later than in Great Britain and the United States, is becoming common. A favorite method of appeal is, however, the placard or poster, and at every election the multi-colored *affiches électorales* on the billboards of Paris and other principal cities afford no end of information and amusement alike for the populace, as well as a good deal of instruction for the student of electoral psychology. So lavishly were multi-colored posters employed in former times by candidates having ampler war-chests, and so often were the humbler offerings of poorer candidates plastered over or torn from their places, that it became necessary to remedy matters by requiring, under a law of 1914, that for elections of every kind municipal authorities should provide official billboards (in numbers proportioned to the population of the commune) and allot an equal amount of space on each to all of the candidates, at the same time forbidding electoral placards or appeals of any sort to be put up in any other places.<sup>1</sup> As a means of further equalizing opportunity, a law of 1919, made permanent in 1924, gives every candidate a chance to send post-free to all of the voters in his district one circular, of limited size, printed by the public authorities though paid for by the candidate himself. As to how much, beyond this, the candidate may spend, or allow to be spent, in advancing his cause, the laws are completely silent. Except in respect to posters and the circular mentioned, the French have not chosen to regulate campaign outlays at all, either by placing limits on the amount as in Great Britain and the United States, or by outlawing certain sources of contributions as in the United States, or by requiring any form of publicity as again in the case of the United States. It is, therefore, impossible to say with assurance how expensive French elections are. The most careful study of the subject that has been made leads, however, to the conclusion that candidates who put forth a really serious effort to secure election to the Chamber spend, on the average, something like 50,000 francs. This is less than is spent by most parliamentary candidates in Great Britain, although the exceptionally large number of candidates in France

<sup>1</sup> At the election of 1932, there were some 10,000 of these billboards in Paris, frequently in the form of boxes, on posts, built around trees along the boulevards.

gives rise to a total outlay nearly if not quite equal to the figure on the other side of the Channel.<sup>1</sup> French candidates are not required to make an electoral deposit, to be forfeited unless they poll a definite proportion of the vote; and since their outlays on "nursing" their constituencies are far smaller than those of English politicians, there can be no doubt that it costs a good deal less to sit in the Palais Bourbon than in the Palace of Westminster.<sup>2</sup>

7. The polling:

a. The ballot

Voting is by secret ballot, and in all parts of the country on the same day. The use of written or printed ballots dates from as far back as the Revolution. Until comparatively recent years, however, the technique of ballot voting left much to be desired. As late as 1911, the ballots were furnished, not by the state, but by the candidates themselves, and distributed promiscuously among the voters both prior to the election and at the polls on election day; though required to be on white paper, with no outward signs or marks, ballots which were circulated in the interest of different candidates or parties could always be distinguished by size, shape, texture, or manner of folding; and when presented at the polls, they were not deposited in the electoral urn by the voters themselves, but merely handed to the principal officer in charge, commonly the mayor. A statute of the year mentioned, supplemented by another in 1914, improved matters by providing (1) that when the voter arrived at the polls he should be given an opaque envelope, provided by the state, (2) that he should retire to the secrecy of a booth and there seal the ballot of his choice in the envelope, and (3) that he should then personally deposit the envelope in the electoral urn. Even yet, the ballots were furnished by the candidates, and brought by the voters to the polls or thrust into their hands upon arrival there by importunate party workers. Only in 1919 was the essential principle of the Australian ballot adopted in a law which, while still allowing sample ballots to be distributed in advance by candidates or their supporters, stipulated that the only ballots actually used at the polls should be official ones given to the voters when entering the polling room. Since that time, the sample ballots also, though

<sup>1</sup> J. K. Pollock, *Money and Politics Abroad*, 284-285. It goes without saying that in individual cases decidedly large sums are sometimes spent.

<sup>2</sup> The pay of deputies, it may be noted, was fixed in 1928 at 60,000 francs, and is now 62,000.

paid for by the candidates, have been printed by the public authorities and sent out by the candidates or their agents, along with the circular mentioned above, free of postage.

As a rule, the polling takes place in the *mairie*, or town hall, of the commune, though in more populous communes it is necessary for the department prefect to designate additional polling places, which are usually schoolhouses. At each polling place, a "bureau" of five persons is in charge—the mayor and four members of the communal council, or, in case there is more than a single polling place in the commune, five *adjoints* (assistants) or councillors whom the mayor designates; and this bureau, aided by a poll clerk named by the mayor, keeps order and decides all questions that arise. Unlike American election officials, these persons invariably give their services free, which is a main reason why French elections are uncommonly inexpensive. Before presenting himself at the polls, the voter has received not only the sample ballots and campaign circulars for post-free distribution of which the law provides, but also a *carte électorale* bearing his name, his number on the register, and the date and place of the polling; and when he arrives, he first of all hands this card to a member of the bureau, who reads off the name for the secretary to check on the list of electors before him. The card is returned, because, should no candidate receive a majority, a second polling will be necessary; a corner, however, is clipped off to prevent it from being used a second time during the initial polling, and also to provide means of checking the number of votes that have been cast. Having received his official ballot, marked it in a booth, and deposited it in the urn, the voter, who in America would be expected promptly to take his departure, may remain as a spectator as long as he likes, and not merely to look silently upon the proceedings, but to gossip and argue with his neighbors until perchance the hubbub compels the officials to call in a gendarme to clear the room. The polling ended, the bureau counts the votes, aided by "scrutineers" drafted from among the lingering voters if the task promises to be heavy. Thereupon the results are certified to the higher authorities, by whom they are announced.<sup>1</sup>

b. Casting  
and counting  
the votes

<sup>1</sup> The election returns are examined and contested elections decided (often on partisan lines) by the Chamber of Deputies itself, under a form of procedure described in E. M. Sait, *op. cit.*, 181–183. On Great Britain's different usage, see p. 199 above.

c. Second  
ballotings

In view of the multiplicity of candidates in most districts, it goes without saying that frequently no one receives a majority of the votes cast. In England, where three-cornered contests usually result the same way, there is strong demand, as we have seen, for some system that will ensure majority election; and one of the devices proposed to that end is a second ballot between the two candidates standing highest. The method of the second ballot has been employed extensively in Continental Europe, and as the law now stands in France it is brought into play in any district in which, at the first balloting, no candidate receives (a) an absolute majority of the votes cast and at the same time (b) a number of votes equal to one-fourth of the whole number of qualified electors in the district. Contrary to the proposal on the other side of the Channel, France—in line with all of her earlier practice in the matter—allows any and all of the original candidates to remain in the race, and even new ones to enter; and at the second balloting, whoever gets the largest number of votes wins. The period between ballotings—now shortened from fifteen days to eight—is likely to witness plenty of bargaining, as a result of which the number of surviving candidates may be reduced, even to two. But the outcome may very imperfectly reflect the will of the district electorate as a whole. At the election of 1928, only 148 seats out of the then total of 612 were won at the first *tour*, leaving 464 to be contested a second time—truly the fulfillment, remarks one observer, of a politician's dream.

d. Purity of  
elections

As early as 1852, certain types of electoral offenses, principally false registration, intimidation, and bribery, were placed under the ban, but sixty years afterwards no less a witness than M. Briand testified that corrupt practices still largely escaped repression. The situation is now much improved. To be sure, ballot boxes are still occasionally stuffed; the method of counting allows too great opportunity for fraud; food and drink are sometimes dispensed to voters, and grosser forms of bribery come to light. Nevertheless, laws of 1913 and 1914 gave the country a corrupt and illegal practices code worthy of comparison with legislation of similar nature in Great Britain and the United States, and, on the whole, elections nowadays are conducted honestly and fairly. This does not mean that the electorate is exempt from pressure applied with the object of influencing it to vote, or not to vote, in certain ways. From Napoleonic times

onward, the government at Paris notoriously and systematically employed the prefects, subprefects, and other local functionaries—including even the village schoolmasters—as agents in inducing the people to give their support to candidates regarded favorably at the capital; and, though such a policy is now followed less openly and boldly than a few decades ago, complaint is still heard that the government (as is notoriously true of governments in the Balkan states) “never loses an election”—although, as was evidenced by the results of the 1924 election, the saying is not wholly and literally true. The Catholic clergy, especially in the rural districts, has traditionally thrown its influence against political leaders and elements regarded as anti-clerical or radical. Here, too, the situation is better than formerly, although it is believed still true that some priest knows how almost any peasant elector will vote. Large employers and landlords are similarly suspected of occasionally seeking to swing the votes of their employees and tenants.

An electoral system otherwise remarkably stable has been changeable indeed in the matter of areas employed as units for representation. With never more than brief interruption, the country has for fifty years been the stage for a running debate on the subject, punctuated by experiments first with one scheme and then with another; and the question is quite as unsettled today as at any time in the past. Fundamentally, the issue is between small electoral districts entitled to one deputy apiece and larger districts entitled to several. When the former plan has prevailed, the area employed has commonly been the *arrondissement*, and the system has been termed *scrutin uninominal* or *scrutin d'arrondissement*. When the alternative scheme has been in effect, the area has been the department itself (or some specially formed division thereof), and, the group of deputies being elected on a general ticket, the plan has been known as *scrutin de liste*. The Third Republic started off in 1875 with the single-member system. Believing that this enabled the monarchists to win more than their share of seats, the republicans in 1885 procured a change to the list system, which, however, proved disappointing and in the election of 1889 nearly enabled a schemer by the name of Boulanger to capture control of the country. Returning forthwith to the earlier plan, the nation clung to it until after the World War, though all the while divided sharply between two schools of opinion on the subject. In 1919, the list system was

The problem  
of electoral  
areas

Arguments  
pro and con

adopted again; in 1927, the single-member system once more; and the latter, although revived more or less as a makeshift and violently opposed in many quarters, is still in operation.

No one who looks into the historic controversy can fail to perceive that politicians and groups have been guided in their attitudes chiefly by what they believed would be the practical effects of one system or the other upon their own fortunes. Plenty of arguments of more solid character have, however, been adduced for and against both plans. The small single-member district is defended on the ground of simplicity and convenience, the opportunity which it affords for the voter to know the candidates and for the deputy to know his constituents, and the larger chance that the system affords minority parties to win seats. On the other hand, it is opposed and the larger type of district favored on the grounds, among others, (1) that the single-member plan narrows the range of choice and tends to the selection of inferior men, (2) that it causes the deputy to be regarded, and to regard himself, too largely as a promoter of the interests of his own local community merely, rather than those of the country as a whole,<sup>1</sup> (3) that it makes it easier for the government to put pressure on the voters and control the results of elections, and (4) that, without making any assured provision for minorities to be represented equitably, it enables many deputies to be elected, where the number of candidates is large, by simple plurality, which commonly means by mere minority. Apropos of the last-mentioned point, statistics seem to show that all the way from 1876 to 1919 the Chamber of Deputies was elected, on the average, by less than 45 per cent of the qualified voters of the country.

Down to 1919, whenever the multi-member district plan was in use, the parties normally put up as many candidates in a

<sup>1</sup> As Professor Sait points out (*Government and Politics of France*, 150), this undesirable tendency of the representative to become a mere agent of his constituents is characteristic of our representative system in the United States, as it is of the French system. On the other hand, it hardly exists in Great Britain; so that the single-member district does not invariably work out in such a fashion. In Continental Europe, however, this problem of electoral areas seems to present an eternal dilemma; under a single-member-district system, the deputy comes too close to his constituents, in the sense of becoming a mere agent to solicit favors for them; under a multi-member-district system, he is too far removed and the relation becomes too impersonal. On Germany's experience with the latter difficulty, see p. 740 below.

district as there were places to be filled, and the list that secured a majority (or at the second balloting, a simple plurality) was declared elected, to the exclusion of any representation for minority groups generally. When, however, in the year mentioned, the multi-member system was revived, there was coupled with it a feature for which growing numbers of political leaders had been clamoring, namely, proportional representation. Indeed, the list system would hardly have been restored at all without this new feature, designed to bring France into line with what many people considered the most advanced electoral practice as exemplified not only in Switzerland and Belgium but in Germany, Austria, and other Continental states endowed with new post-war governments. Whether the proportional system would have proved a success had it been adopted in the thoroughgoing form prevailing in the other countries mentioned, one cannot say. As it was, the plan installed, being the product of hard-won compromise between Chamber and Senate, was only a partial, hybrid one; and trial of it in two general elections led, in 1927, to complete abandonment of it, followed by restoration of the now existing single-member-district system. The principal peculiarity of the law of 1919 was that while it provided for election of deputies in departments or divisions thereof returning at least three members each, and for election under a scheme of party lists as in Belgium and elsewhere, it stipulated that all candidates voted for on a majority of the ballots cast should be declared elected on that basis, leaving the proportional principle to be brought into play only in allotting such seats as still remained to be filled. At the very first election held under the law—that of 1919—a number of the more conservative groups, allied in a *Bloc National*, pooled their lists and by thus massing their strength brought it about that in as many as 20 of the departments every seat was filled without any application of the proportional plan at all. The Unified Socialists, polling a quarter of the popular vote, came off with but one-ninth of the seats. With this experience in mind, the parties of the Left, operating as a *Cartel des Gauches*, at the next election—in 1924—pursued the same tactics, with similar results. To such an absurdity did political manipulation thus reduce the system that even the most ardent proportional-representationists were forced to the conclusion that it would be best to sweep it away altogether and

An ill-fated  
experiment  
with propor-  
tional repre-  
sentation



make a fresh start. The parties of the Right would have been glad to see an out and out plan of proportional representation substituted forthwith. The Left, however, which, like the British Labor party, had once favored the system but had now changed its mind, blocked every effort in that direction, and in 1927 the *arrondissement*, with a single deputy, once more became the electoral area, though with provision for combining *arrondissements* with fewer than 40,000 inhabitants and dividing others with more than 100,000. In later years, the battle of the *majoritaires* and *proportionnalistes* went merrily on, without any positive result.<sup>1</sup>

Personnel of  
the Chamber

So much for the electoral system. What of the results? What sorts of people find their way into the Chamber, and how satisfactory is it as a representative body? To begin with, the general run of the membership is bourgeois, or middle-class. Few members come from families allied with the old nobility; few are large landowners or persons of note in the world of commerce and industry. On the other hand, few have ever performed manual labor, on farm or in factory. The great majority are men who have grown up, and achieved at least some local distinction, in the professions. They are lawyers, journalists, physicians, bankers, school-teachers, retired civil servants, with of course a good many professional politicians. Lawyers are not quite so much in evidence as in the average American legislature, yet far more so than in the British House of Commons, and they always form the largest group; after the election of 1932, there were 250 of them in a membership of 615.<sup>2</sup> Naturally, a large proportion of deputies have had experience as members of communal or departmental councils, or in other local government capacities; and most of them have been active locally as members of party

<sup>1</sup> For a full description of the law of 1919, see *Representation* (published by the English Proportional Representation Society), Oct., 1919, pp. 10-16. The text of the electoral law of 1927 is reprinted in *Rev. du Droit Public et de la Sci. Polit.*, July-Sept., 1927, pp. 506 ff. A useful historical account of French suffrage and elections is C. Seymour and D. F. Frary, *How the World Votes*, I, Chaps. xv-xviii. Fuller treatments of the subject include A. Tecklenburg, *Die Entwicklung des Wahlrechts in Frankreich seit 1789* (Tübingen, 1911), and P. Meuriot, *La population et les lois électorales en France de 1789 à nos jours* (Paris, 1917).

<sup>2</sup> As compared with 63 farmers and "agricultural engineers," 46 manufacturers, 42 physicians, 35 publicists, 32 professors and honorary professors, 27 former civil servants, 19 mechanical and civil engineers, 15 journalists and men of letters, 14 landlords, etc.

committees or as party workers of other sorts. All in all, the Chamber is, as Lord Bryce once pointed out, neither aristocratic nor plutocratic; it contains no small amount of talent, being notably apt at fluent and lucid debate; and while the average member, after two or three terms, goes back to his home to resume his law practice or other professional or business activity and is promptly forgotten, a good many of the ablest ones enjoy long and increasingly useful careers in the Chamber or, more likely, are translated to the Senate, in either case standing a good chance of winning the coveted distinction of a ministerial appointment—perhaps successive appointments—with even a possibility of attaining the premiership.

France shares with the rest of the world a deep dissatisfaction with existing legislative bodies, and there is plenty of complaint that the Chamber is not all that it ought to be—not even as intelligent and competent as it once was. Undoubtedly there are shortcomings. There is less of an intellectual *élite* in the Chamber than formerly, and less willingness on the part of the membership to be led by such an *élite* in so far as it still exists. The absence of strong, stable, centralized parties tempts, and almost compels, candidates for seats, and likewise members after election, to engage in bargaining and intrigue hardly compatible with fixed principle and sturdy policy. Election from little single-member districts favors the ward-politician type of candidate, and tends to put the deputy in a position where he will feel obliged, however much he dislikes doing so, to spend more time trafficking with the ministers at Paris for offices, honors, licenses, dispensations, decorations, and other favors coveted by his constituents than upon the public business.<sup>1</sup> To raise the level of the Chamber, some urge lengthening the term; many favor reviving *scrutin de liste*, with or without proportional representation; some advocate doing away with geographical representation and substituting a scheme of representation of economic and professional interests. The second proposal, at least, has merit. After all, however, it is not clear that the Chamber is in any essential respect inferior to parliamentary bodies elsewhere, or that it will ever be improved except through improvement of the very electorate which now complains of it.

Criticisms  
and proposals

<sup>1</sup> For interesting comment on the ways in which a deputy wins and holds the favor of his constituents, see J. Bryce, *Modern Democracies*, I, 249-251, 257-259.

Problem of  
the Senate  
in 1875

Having decided that Parliament should consist of two houses the National Assembly in 1875 faced the difficult problem of creating a second chamber that would comport with the new republican system without at the same time being too democratic or too much of a mere duplication of the Chamber of Deputies. In the nature of things, such a chamber must be hereditary, appointive, elective, or composed of different groups designated in two or more of these ways. In a republic—even one established as grudgingly as that of 1875—an hereditary upper house would be unthinkable. A chamber appointed by the head of the state has almost equally been associated with monarchy; its members *might*, to be sure, be appointed by the president of a republic, but for France this was manifestly undesirable since the president was himself to be chosen by a body in which the senators would be a weighty element. Election remained, and was considered in many different forms: direct popular election by the same voters who were to choose the deputies; direct popular election under a more limited suffrage; indirect election, which in turn could be planned on many different lines, although not on that of choice by state legislatures as in the United States, for the obvious reason that France had no political divisions corresponding to our states.

The plan  
agreed upon

The scheme hit upon was a cleverly devised compromise, which, like most compromises, did not entirely please anybody, yet was sensible and workable enough to prove in after years more satisfactory and durable than perhaps any of its authors dared anticipate. As laid down in the Law on the Organization of the Senate, the plan was, in a word, that the Senate should consist of 300 members, of whom 225 should be elected (218 by the departments of France proper and seven by Algeria, Belfort, and the colonies) for terms of nine years, the remaining 75 being designated by the National Assembly itself. The elective members were apportioned among the departments, on a basis of population, so that each received from two to five; and in each case election was to be by an electoral college meeting at the department capital and consisting of (1) the department's representatives in the Chamber of Deputies, (2) the members of the department's elective general council, (3) the members of all *arrondissement* councils within the department, and (4) one delegate from each communal council in the department.<sup>1</sup>

<sup>1</sup> On this system of local councils, see pp. 628-632 below.

The 75 members named by the National Assembly before it passed out of existence were to sit as senators for the rest of their lives, vacancies being filled, with similar tenure, by the Senate itself as they arose. A good deal was made of the point that this cooperative group of members would provide a continuous, steadying element, beyond the reach of fluctuating public opinion, and that the arrangement would open an easy way for the Senate to avail itself of the services of men of distinction in law, letters, science, industry, and commerce who might not otherwise seek or attain election. The main impetus behind the plan, however, was the desire of the monarchists to pack the Senate from the outset with persons of their own persuasion and thereby ease the way for scuttling the republic when the time grew ripe. This latter objective proved illusory. Rather than permit Orleanists to be chosen, the Legitimists threw their strength to republican candidates, with the result that of the 75 originally elected, only 18 were monarchists of any stripe.

A few years of experience brought about some changes. In order to make the system more flexible, a constitutional amendment of 1884 lifted the first seven articles of the law of 1875 out of the constitution, leaving only four articles remaining; and since that time all arrangements as to numbers, mode of election, apportionment, qualifications, term, and removals have rested on the basis of statute only. The way thus cleared, Parliament, in the same year, introduced two important modifications. For a good while, life tenure had been under fire, and Parliament now provided that while senators at present sitting by such right should be allowed to serve out their days, all seats thenceforth falling vacant by the death of such members should be allotted to the departments to be filled in the regular manner. The last surviving life member died in 1918, and since that time all senators have owed their seats to election by the departmental colleges. By 1884, too, dissatisfaction on the part of the more liberal and radical political elements with an arrangement under which each commune as such, irrespective of its population, had only one vote in an electoral college rose to the point where a change could be forced; and the law just mentioned broadened the membership of the body to include not merely one delegate from each commune, but any number up to 24 (30 in the case of Paris), according to the number of inhabitants. This change

Later  
changes

gave the Senate a new slant toward liberalism by allotting more electoral power to the urban populations. It stopped short, however, of giving them power in proportion to numbers; for while a great city could have only 24 representatives in the electoral college of the department in which it was situated, every one of the towns and villages in the department (often dozens of them), even with populations of only 50 or 100, remained entitled to at least one.<sup>1</sup> To this day, the senatorial electoral system has thus continued to favor the more cautious and conservative elements in politics, though in less degree than formerly.

Today, therefore, the Senate consists of 314 persons<sup>2</sup> (a little more than half the number in the Chamber of Deputies); and, except for seven sitting for Algeria and the colonies, all are elected on the same basis in the departments. The term is long, *i.e.*, nine years, but with arrangement for overlapping so that one-third of the seats fall vacant every three years, as happens every two years in the United States. Qualifications for election are the same as for deputies except that the minimum age is 40 instead of 25.

Candidacies  
and elections

Senatorial deputations from the departments (from two to ten in number) are renewed integrally; that is to say, all senators from a given department are elected at the same time, and, except for filling vacancies, each department has a senatorial election only once in nine years. One group of departments elects in 1935, a second in 1938, and a third in 1941.<sup>3</sup> Candidates are merely announced by themselves or by agents or supporters; and though it does not often happen, a man may simultaneously seek election in more than one department, afterwards choosing the one which he will represent if successful in two or more. To secure election, one ordinarily must be a resident of the department and must have gained some experience and prominence as a mayor, a member of the department council, a deputy in the Chamber at Paris, or in some other capacity; and most persons

<sup>1</sup> Thus, Lille, with 216,000 inhabitants, has 24 delegates, and 24 villages near it, in the same department, with an aggregate population of 4,000, have the same number. All places of 60,000 population or above have 24 delegates, but in no instance more except Paris.

<sup>2</sup> This number comes about through the allotment of 14 senatorial seats in 1910 to three departments—Moselle, Bas-Rhin, and Haut-Rhin—created from the retroceded territory of Alsace-Lorraine.

<sup>3</sup> At the last election (in 1932), 111 senators were chosen in 32 departments.

who win are lawyers, journalists, landowners, professional politicians—especially such as have served a period of apprenticeship in the Chamber. As might be expected in an electoral body in which geographical divisions are to some extent separately represented, there is a good deal of demand for rotation of seats among the *arrondissements* or other areas. Elections are held in all cases in the department capital, according to a procedure carefully laid down by national law; and choice is by *scrutin de liste*, with no application of the principle of proportional representation.<sup>1</sup> As a rule, a candidate will have carried on something of a campaign; and when the electoral body meets it is apt to be addressed by the rivals in turn, each urging his claims. The nature of the preliminary canvass is naturally affected, however, by the fact that it is not the people at large who are to vote, but only a relatively small number of persons gathered in an electoral conclave. Charges of corruption are heard occasionally, but questionable practices commonly take the form of promises of appointments and other favors for electors or their friends, rather than grosser offenses such as bribery with money.

Observers agree that the Senate is a vigorous, capable, and useful legislative body; certainly no second chamber elsewhere equals it in power except the American Senate and the Japanese House of Peers. It originates a good deal of important legislation; it exercises its power of revision with much deliberation and independence; it sometimes delays, amends, or defeats great measures upon which both cabinet and Chamber are agreed; and, as we have seen, it has several times driven a cabinet from office. Much of the time, to be sure, it yields substantial precedence to the Chamber. As an indirectly elected body, its claim to represent public opinion is less strong; and it usually exercises a fine sense of discrimination in deciding when to stand firm and when to give way. But it is certainly not of the type of second chambers in which Continental Europe has abounded since the World War. Furthermore, it is not only powerful; it is able. Nearly forty years ago, ex-President Lowell described it as "composed of as impressive a body of men as can be found in any legislative body in the world,"<sup>2</sup> and as recently as 1921 Lord

An able and strong second chamber

<sup>1</sup> On the first two ballots, election can be only by majority; on the third ballot, which is final, a plurality suffices.

<sup>2</sup> *Governments and Parties in Continental Europe*, I, 22.

Bryce expressed the opinion that "no other legislative body has in modern times shown a higher average standard of knowledge and ability among its members."<sup>1</sup> Recruited from the substantial elements of the country's population—from people who as a rule have risen to eminence in their home localities, have had experience in public office, are well educated, and have landed or other propertied interests, including many men of distinction in letters and science—it is admittedly superior in personnel to the Chamber of Deputies, with its large proportion of country lawyers, school-teachers, and other people of circumscribed horizons and limited experience with large affairs. Long terms and numerous reflections give further opportunity for growth in knowledge, experience, and influence. A main reason, indeed, for the high quality of the Senate is the steady drawing off into its ranks of the abler and more experienced members of the Chamber. Hardly a deputy does not aspire to round out his career by going to the Senate, and so frequently is the ambition realized, especially by the more vigorous and astute, that in 1930, for example, no fewer than 95 of the senators—almost a third of the total number—had once been members of the other house. What the Senate gains, the Chamber loses; as abler and maturer deputies migrate, their places are of necessity taken by younger, less experienced, and often less capable men. The deputies have the advantage of coming directly and more freshly from the people; and in a democracy this cannot fail to mean a good deal. But, by and large, the senators can more than match them in prestige, in familiarity with affairs, and in parliamentary skill acquired in a school of experience whose preparatory department is, for many, the Chamber itself.

A less conservative body than intended

Composed of persons at least 40 years of age (the average age is usually quite a little beyond 60<sup>2</sup>), and drawn from what may, even in France, be termed the "governing classes," the Senate is traditionally averse to sudden innovations and sweeping changes. Nevertheless, it is by no means so conservative as originally expected and by some intended. Gambetta and other republican leaders accepted it grudgingly when it was written into the constitution in 1875, and for a quarter of a century the

<sup>1</sup> *Modern Democracies*, I, 238.

<sup>2</sup> As compared with a trifle more than 48 in the Chamber of Deputies sitting in 1934, and 54 in its predecessor.

Radical party which they founded consistently advocated that it be suppressed. Less reactionary, however, from the outset than was anticipated, the chamber gradually grew more liberal;<sup>1</sup> and though, as a group of older men with considerable vested interests, it has incurred much criticism because of its slowness to assent to income taxes, social insurance, labor legislation, woman's suffrage, and other progressive measures, it has on several occasions proved more liberal-minded than the Chamber itself. Indeed, a competent observer voices the opinion that it has been more liberal than that body right along since 1924.<sup>2</sup>

The existing set-up, however, seems to many people to remove the Senate too far from popular control, not only because the members are elected indirectly, but also because they are chosen by electoral colleges many of whose members may themselves have been elected as much as three or four years previously, and because, once chosen, they are ensconced in their seats for nine long years. One will not be surprised, therefore, to learn that a shorter term has been advocated, nor that there has at times been a good deal of sentiment in favor of the same sort of change that was made in the United States in 1913 when the election of senators was transferred from the state legislatures to the people. More radical elements, notably the Socialists, would, indeed, like to see the Senate abolished altogether. A resolution in favor of direct election passed the Chamber of Deputies in 1884, though it was dropped when the decision was reached to allow life memberships to lapse as they fell vacant. Twelve years later, a brilliant debate took place in the Chamber on two proposed constitutional amendments, one looking to direct election and the other to a further popularization of the electoral colleges. The second was adopted. But the Senate refused to concur. The discussion has since gone on intermittently, though with no tangible results, partly because the Senate itself has no desire to be "reformed," partly also because advocates of change have shown no capacity for coming together on a definite program. Among interesting proposals heard is that the body be reconstructed, in whole or in part, on the principle of representation of interests or groups, a plan which, as we have seen, has been

Further  
proposed  
changes

<sup>1</sup> The broadening of the electoral base in 1884, together with the gradual disappearance of life memberships after that date, contributed to this development.

<sup>2</sup> H. Finer, *Theory and Practice of Modern Government*, I, 693.



advocated as a basis of second chamber reform in Great Britain. But no steps of the kind—nor indeed of any other nature—are at present in prospect.<sup>1</sup>

<sup>1</sup> Good general accounts of the Senate include E. M. Sait, *Government and Politics of France*, Chap. v; Lord Bryce, *Modern Democracies*, I, 231-239; A. Esmein, *Éléments de droit constitutionnel* (8th ed.), II, 370-391. The principal treatise is G. Coste, *Rôle législatif et politique du Sénat sous la troisième république* (Montpellier, 1917).

## CHAPTER XXVI

### THE PARLIAMENTARY SYSTEM

Recalling vividly the perils to which it had itself been subjected in Paris during the bloody days of the Commune, the National Assembly wrote into the constitution of 1875 a clause making the old royal palace at Versailles the meeting place of the chambers and the seat of the executive branch of the government as well. A few years, however, removed all danger of further disorder, and in 1879 a constitutional amendment opened the way for an immediate transfer of the seat of government back to its logical place in the metropolis. The president took up his residence in the Palais de l'Élysée; the Chamber of Deputies fell heir to the Palais Bourbon; the Senate occupied the Palais de Luxembourg—arrangements which, though unusual in that the two branches of the legislature found themselves ensconced under separate roofs, have prevailed from that day to this. Dating from the eighteenth century, the Palais Bourbon is situated in the neighborhood of a group of administrative buildings at the end of the Boulevard St. Germain, directly across the Seine from the broad and historic Place de la Concorde. The building is huge and rambling, but even so, its principal chamber, committee rooms, and other facilities—and especially its ventilation and lighting—are far from adequate for a legislative body of 615 members. Located upwards of a mile away, at the intersection of the Rue de Tournon and the Rue de Vaugirard, the still older Palais de Luxembourg provides the smaller Senate with commodious, indeed luxurious, quarters.

The physical setting

The constitution requires that the two houses meet on the second Tuesday of January of each year (unless convened at an earlier date by the president of the Republic), and that every year they be in session a total of not less than five months. In countries under dictatorship, parliament sits for only brief and uncertain periods. In Japan, too, the Diet is in session hardly a quarter of the time. Where popular government prevails, however, necessity prescribes otherwise, and in point of fact the

Sessions

French Parliament has two protracted sessions a year, the first, regarded as the regular session, extending from January to July, and the second, considered as a *session extraordinaire*, and devoted chiefly to consideration of the budget, running through most of November and December—a schedule, it will be observed, not very different from that of the British Parliament. In addition, special sessions may be called by the president of the Republic, either on advice of the ministers or at the request of a majority of the members of the two houses themselves. Unlike American legislatures, the chambers have no independent power to bring a session to a close, or even to vote on adjournment. They can take a brief recess, but they can be adjourned and a session can be closed only by the president of the Republic,<sup>1</sup> again on ministerial advice. There is nothing like the English practice of prorogation, carrying pending business along during suspension of sittings for an indefinite period; but on the other hand, adjournment does not automatically terminate such business, as it does in England.<sup>2</sup> Constitutionally, the same power of dissolution exists as in Great Britain. Not only, however, must the consent of the Senate be obtained, but the one dissolution that has taken place—at the time of the famous *Seize Mai* crisis of 1877—stirred so much feeling that no other has ever been attempted.

Publicity of  
proceedings

Only slowly and grudgingly did the English Parliament accept the principle that the general public had a right to hear its debates and to read them in authorized printed reports. Since 1789, full parliamentary publicity has, however, repeatedly been proclaimed in France as an essential guarantee of political liberty; and the constitution of 1875 stipulates that sittings of the chambers shall be public, even though the Senate may close its doors if five of its members, and the Chamber if twenty, so request and the proposal is adopted by absolute majority.<sup>3</sup> Normally, spectators are admitted by card, as long as there are vacant seats in the galleries; and verbatim reports of proceedings

<sup>1</sup> Such adjournment may never be for longer than one month, nor be ordered more than twice in any one session.

<sup>2</sup> War plays havoc with established rules, and from 1915 to 1919 there was no official closing of a session, so that, technically, there was a single extended session throughout all that time, although there were long periods of adjournment.

<sup>3</sup> In no instance was this done until necessitated by military exigencies during the World War.

are published and distributed by a government printing establishment substantially as in Great Britain and the United States.<sup>1</sup>

As in other countries, each house is judge of the qualifications of its own members, and each has unlimited control over the retention by a member of his seat during the full period for which he has been chosen. If a member wishes to resign, he can do so by obtaining permission of the chamber to which he belongs; if he loses his civil rights, or otherwise becomes disqualified, it is for that chamber to say whether and when he must retire; and the chamber may expel him for reasons that seem to it sufficient, regardless of his formal qualifications. A deputy who accepts a salaried public position—apart from ministerial posts and under-secretaryships—automatically vacates his seat, although he may be reelected if the office is among those regarded as not incompatible with membership. No rule of the kind applies in the case of senators. With a view to protecting freedom of debate and of decision in the chambers, both senators and deputies are guaranteed against legal liability for opinions expressed or votes cast in the performance of their duties. Moreover, they may not, except with consent of the chamber to which they belong, be prosecuted or arrested for any misdemeanor or crime unless caught in the act, and even then the chamber concerned is entitled to demand the suspension of prosecution for the entire term of the parliament. There is no intent, of course, to confer any privilege of violating the law with impunity, but only to set up a bar against interference with the freedom of members when actually in service, inspired perhaps by partisan motives. Between sessions, all immunity lapses.<sup>2</sup>

Status and  
pay of mem-  
bers

Among other novel ideas, the Revolution of 1789 introduced that of providing members of legislative bodies with salaries out of the public treasury. The constitution of the Third Republic says nothing on the subject, but laws dating from the same period established the principle that senators and deputies should be paid equally, and fixed the amount at 9,000 francs a year. From this figure the stipend has risen to the present

<sup>1</sup> For the various forms in which the proceedings of the Chamber of Deputies are issued, see E. M. Sait, *Government and Politics of France*, 195, note.

<sup>2</sup> A. Esmein, *Éléments de droit constitutionnel* (8th ed.), 418-432. It should be added that immunity does not extend at any time to charges of violation of mere police regulations.

62,000 francs, with supplementary allowances for secretarial and entertainment expenses. Even so, the pay is small in comparison with that of senators and representatives in the United States. Living in Paris is more expensive than in the provinces, and most members, not being men of means, are obliged to exercise rigorous frugality.

Officers:

At the opening of every regular session, whether or not of a new parliament, each chamber elects by ballot, and from its own membership, the staff of officers that will have charge of its affairs during the coming year. In the Chamber, this "bureau" consists of a president, four vice-presidents, eight secretaries, and three quaestors; in the Senate, the same arrangement holds except that there is only one vice-president. Certain minor duties devolving upon the bureau are performed by these officers collectively, *e.g.*, appointing stenographers, clerks, door-keepers, and other paid employees. In the main, however, each group has its own special tasks, one of the vice-presidents taking the chair when the president is absent, the secretaries supervising stenographic reports and counting votes, the quaestors looking after accounts, payment of salaries, archives, libraries, admission to the galleries, and the like.

The president

As would be expected, the president is in each chamber by all odds the most important official. Indeed, the Senate's presiding officer ranks next to the president of the Republic, and the Chamber's follows immediately after. Both are usually the first men to be called to the Élysée for advice when a new ministry is to be made up. As defined partly by law and partly by the rules of procedure, the duties and powers of the two officials are substantially the same—recognizing members who seek the floor, interpreting the rules, putting questions to a vote, announcing the results, signing records of proceedings, receiving memorials and other communications addressed to the chamber, and representing it in its dealings with the other chamber and with the executive authorities. In particular, the president is charged with maintaining parliamentary decorum; and while in the Senate, where debates are carried on in an exceptionally tranquil atmosphere, this entails no great burden, in the Chamber, where passions run high, the president's courage and tact are often put to test. If when dispute is waxing hot the chair can intervene with a judicious observation, or perhaps a *bon mot*, he may be

able to restore a semblance of calm. Failing this, he may get results by rapping sharply with his paper knife on the edge of his desk, or by ringing a hand-bell. As a last resort, he may exercise his terrifying *droit de chapeau*—that is to say, he may put on his hat!—as a warning that unless order is restored he will suspend the sitting; and plenty of times such suspensions alone serve to bring back excited and unruly members to a frame of mind in which business can proceed. As for himself, the president is not expected to maintain the completely non-partisan attitude of the British speaker. Not so long ago, he was seen descending from the chair and giving the Chamber the benefit of his views on any issue on which he cared to speak. So far as the rules go, he might still do this. Under recent custom, however, he commonly refrains not only from debate but from voting, even in the case of a tie; and about the worst that can now be said is that he is still sometimes prone to wield the power of recognition and of interpreting the rules with ill-concealed partiality toward the *bloc* which elected him. On the whole, he is still considerably nearer the American than the British speaker. Extended parliamentary experience, knowledge of the rules, a vigorous physique, keen powers of observation, unflinching intuition in matters of mass psychology—these are qualities which he almost necessarily must possess. Small wonder that the complaint is heard that few members are good presidential timber! Small wonder, too, that, a suitable man once found, he is likely to be reëlected over and over, even after the combination that first placed him in office has dissolved or passed from power! Brisson was elected president of the Chamber 20 times and Deschanel 15.

Both Senate and Chamber make free use of committees, but <sup>the committee system</sup> long and arduous experience was required to bring the system to its present moderately satisfactory form. Both chambers inherited from times as remote as those of the Estates General a usage according to which the members of a parliamentary body were divided by lot into a certain number of *bureaux*, or sections, a new division going into effect every month while the session lasted. In the early days of the Third Republic, bills and proposals intended for consideration by either house were submitted for preliminary examination merely to these chance groups—eleven in number in the Chamber and nine in the Senate.

So crude a plan soon demonstrating its disadvantages, both chambers presently fell into a practice under which, instead of the rapidly changing bureaux considering a referred bill, each of the eleven in the Chamber, and of the nine in the Senate, designated one (in the case of particularly important measures, two, or even three) of its number to join for the purpose with persons similarly named by the others; and the resulting groups, or "commissions," were the earliest of true French parliamentary committees. From this, improvement resulted. Nevertheless, there were still serious drawbacks. There was no guarantee against one committee being surfeited with talent and another barren of it, or a committee being so constituted as to have no interest in the matter referred to it, or minorities being totally unrepresented or on the other hand overrepresented and dominant. Matters requiring reference became so numerous, too, that bewildering numbers of committees had to be set up. This was to a degree remedied by introducing the practice of referring, not a single measure as originally designed, but several, to the same committee, although this often meant to prolong the life of a committee far beyond that of the bureaux from which its members were drawn. But the most serious aspect was that, being made up on a basis of bureaux whose composition was a matter of pure chance, the committees did not, except by rare luck, reflect the party situation in the Chamber or provide groups which could be relied upon to give sympathetic consideration to proposals coming from the government. A ministry of progressive bent, although commanding a working majority in the Chamber, might find its bills emasculated by committees dominated, under the purely mechanical method by which they were made up, by ultraconservatives. Legislation was delayed, ministerial instability increased, responsible government frustrated. The situation was bad enough in the Senate; in the Chamber, it became intolerable.

How committees are now made up

The solution that seemed obvious to any one familiar with American committee history was to cut the committees loose from the purely artificial bureaux and designate their members by some method that would enable them to mirror the political situation in the respective chambers at any given time. And to this France came, belatedly but inevitably. Some familiarity already having been gained with committees lasting as long as

a year and handling groups of measures relating to some general subject, the Chamber of Deputies began in 1882<sup>1</sup> the appointment of standing committees whose number by 1902 had reached 10, each composed of 33 members named for the duration of a parliament. As yet, the members were designated by the bureaux, three from each. But in 1910 they were made elective by the Chamber as a whole, with the number raised to 44 on each committee. According to the new rule, they were to be chosen under a list system, with proportional representation; in practice, this soon came to mean that the Chamber first indicated how many members each party group should have on each committee, the party groups then selected their respective representatives, and the Chamber completed the process by ratifying the "slate." Development in the Senate took a similar course, and in 1921 practically the same plan of committee selection was installed there, although rather because of a feeling that the system ought to be the same in the two houses than because of any special enthusiasm for the reform; in 1923, indeed, when creating two important new committees, the Senate temporarily reverted to selection by the bureaux.

In both houses, the standing committee system encountered plenty of opposition, on the ground that it would lead to narrowing specialization, that the committees would grow arrogant and independent, that the chambers would be resolved into a group of miniature legislatures and their proceedings become perfunctory. In the United States, Woodrow Wilson had argued in his *Congressional Government* (published in 1885) that standing committees frustrated unity and leadership in Congress, and in Great Britain such committees were not only feared for similar reasons when first established, but in later days have been said by Professor Laski to have reduced parliamentary debate to a farce. In France, they undoubtedly have contributed to keeping the cabinet relatively weak. Their advantages, however, probably outweigh their disadvantages. In any case, adoption of them as a means of enabling parliaments to cope with the tasks devolving upon them in these later days was a practical necessity.

Pros and cons  
of a standing-  
committee  
system

At the present time, the Chamber of Deputies has—in addition

<sup>1</sup> The same year, by curious coincidence, in which the first standing committees were created in the British House of Commons. See pp. 247-249 above.



The commit-  
tees of today

to varying numbers of sessional and special committees set up consider matters not falling within the province of any standing committee, or specially assigned for other reasons—20 *grandes commissions permanentes*, or standing committees, of 44 members each.<sup>1</sup> Like similar committees in the United States, but unlike four of the five in the British House of Commons, they are in all cases committees on particular subjects or fields of legislation. Since 1920, they have been elected for a year at a time, though as a rule their personnel remains much the same throughout the four-year period of a parliament; and in Chamber and Senate alike, no person may belong to more than two standing committees at the same time. At the opening of the regular session in January, the political groups—usually 10 or 12 in number—are allotted their quotas of members.<sup>2</sup> In caucus, each draws up its list of nominations, settling the matter by simple conference if it can, but otherwise taking a formal vote; and lists are published in the *Journal Officiel*. If at the end of three days a list has not been protested by as many as 50 members, it is regarded as elected, the Chamber itself actually voting only in case of a protest, and only upon the committee members protested. The method closely resembles that by which committee members are chosen in the American House of Representatives, though in the latter instance the complete committee lists are always actually voted on. Selection of committees in the French Senate is substantially as in the Chamber. There are, however, only 12 standing committees (*commissions generales*);<sup>3</sup> the number of members is 36; the list of party groups to be repre-

<sup>1</sup> The list is as follows: 1, General, Departmental, and Communal Administration; 2, Foreign Affairs; 3, Agriculture; 4, Algeria, the Colonies, and Protectorates; 5, Alsace-Lorraine; 6, Army; 7, Social Insurance; 8, Commerce and Industry; 9, Accounts and Economics; 10, Customs Duties and Commercial Conventions; 11, Public Instruction and Fine Arts; 12, Finances; 13, Public Health; 14, Civil and Criminal Legislation; 15, Merchant Marine; 16, Military Marine; 17, Mines and Motive Power; 18, Liberated Regions; 19, Labor; 20, Public Works and Communications.

<sup>2</sup> Deputies who, upon being interrogated, refuse to identify themselves with any group are known as *non inscrits* and as such are given their proportional share of places. Cf. p. 578 below.

<sup>3</sup> As follows: 1, Army; 2, Marine; 3, Foreign Affairs and Protectorates; 4, Customs Duties and Commercial Conventions; 5, Public Works; 6, Agriculture; 7, Public Instruction; 8, Public Health and Social Insurance; 9, Civil and Criminal Legislation; 10, General, Departmental, and Communal Administration; 11, Commerce, Industry, Labor, and Posts; 12, Finances.

sented is shorter than in the Chamber; a list may be challenged by as few as 20 members; and for the selection of all special committees the bureaux are still used. As for the bureaux in the Chamber (the Senate, too, except as noted), they have little to do beyond examining the credentials of newly elected members. In neither house is the old plan of monthly renewal adhered to, the Chamber now setting up its bureaux for the duration of a parliament and the Senate for that of a session.<sup>1</sup>

The functions of Parliament are multifold, but they can be grouped under three main heads: (1) legislation, (2) the raising and appropriating of money, and (3) criticism of administrative policy. An English writer of a generation ago made the point that on account of the thoroughness of French political reconstruction between 1789 and 1875, together with the comprehensiveness and durability of the Napoleonic codes, the field of legislation is narrower in France than in England and many other countries;<sup>2</sup> and a later observer was led to assert that the Chamber does not find in legislation its chief interest.<sup>3</sup> However this may be, the steadily widening scope of governmental activities in the past half-century, springing from social and economic changes, and from newer ideas inspired by them, has in France no less than in other countries laid an increasingly heavy burden upon the parliamentary assembly. Legislative proposals have increased both in number and in complexity; and though a surprisingly large part of the resulting new legislation takes the form of administrative *décrets* and *arrêts*, the chambers not only devote much earnest study and discussion to the great issues of national policy, but put forth from year to year a very respectable quantity of new or amended law.

No legislative body could thread its way through the maze of business that confronts the French chambers without an ample body of rules. American legislatures avoided the necessity of working out their procedures from the ground up by taking over those already developed by the British Parliament, and

The work of  
the chambers

Rules of pro-  
cedure

<sup>1</sup> The committee system is described more fully in E. M. Sait, *Government and Politics of France*, 204-212; L. Rogers, "Parliamentary Commissions in France," *Pol. Sci. Quar.*, Sept. and Dec., 1923; and R. K. Gooch, "The French Parliamentary Committee System," *Economica*, June, 1928. The leading treatise is A. Breton, *Les commissions et la réforme de la procédure parlementaire* (Paris, 1922).

<sup>2</sup> J. E. C. Bodley, *France*, II, 213-216.

<sup>3</sup> Lord Bryce, *Modern Democracies*, I, 256.

the French Senate and Chamber likewise appropriated to their use the rules of the National Assembly of 1848, adopting in both cases, in 1876, codes of regulations based on these earlier rules, and in the instance of the Senate adhering to a code of such origin, with occasional modifications, to the present day. The Chamber adopted a new code in 1915. Like standing orders at Westminster, the rules in both houses carry over from one parliament to another, with few changes except such as are sometimes introduced when a new session opens.

The *ordre du jour*

Originally, the order of business in the Chamber of Deputies was fixed by the presiding officers and submitted to the body for approval; and this is still the practice in the Senate. In 1911, however, the Chamber adopted a new plan under which the schedule of work is laid out for a week at a time by the president and vice-presidents of the body, the chairmen of all standing committees, and the presidents of the various party groups, meeting as a *conférence des présidents*, with opportunity for the ministry to indicate its desires if it cares to do so; and the arrangement has proved more satisfactory than the old one.

Government bills and private members' bills

The constitution confers the right to initiate legislation upon both the president of the Republic (in effect, the ministers) and the members of the two houses. Government bills, *i.e.*, bills approved by the ministry and signed by the president, are termed *projets de loi*; private members' bills, *propositions de loi*. The distinction, however, has no such significance as in Great Britain, where, as we have seen, it is a basic feature of the legislative process. Government bills are nearly always introduced first in the Chamber of Deputies, and are usually accompanied by an *exposé des motifs* bringing both to the deputies and to the interested public a summary, frequently illuminating and convincing, of the considerations which have resulted in the decision of the ministry to ask enactment of the measure. Normally, government bills are prepared in one of the departments (sometimes with assistance in phrasing from the Council of State),<sup>1</sup> submitted to the ministry as a whole for approval, signed as a matter of form by the president of the Republic, and thereupon introduced by the department head. A minister or department may be the actual author. But in a great many cases government bills originate with a non-ministerial senator or deputy, who

<sup>1</sup> See p. 613 below.

indeed might introduce his measure on his own responsibility, but who realizes that its chance of passage is likely to be increased considerably if it comes to the chambers under government sponsorship. Ministers are thus continually bombarded with proposals for legislation in which private members seek to interest them; indeed, when the matter is one of general importance, a favorite plan is to offer a resolution in one of the houses formally requesting the ministry to draft and submit a *projet* relating to it. Frequently, of course, real authorship reaches back farther still—to some group or interest which has prodded the deputy or senator to action.

Not only do private members thus instigate government bills far more frequently than in England, but they themselves introduce many more measures (bills, resolutions, amendments, and the like) and under far fewer restrictions than on the other side of the Channel. Such measures may be brought forward by a member single-handedly, or they may be sponsored by any number of deputies or senators, whose names must, however, in all cases be attached. The president of the Chamber will not permit a bill conflicting with the constitution to be considered; and a member may not introduce a measure which has, within the preceding three months, been introduced and rejected. Otherwise, the way is open. The fact that in less than 13 months, in 1928-29, no fewer than 1,078 *propositions de loi ou de resolution* and 1,080 amendments came from private members in the Chamber of Deputies alone<sup>1</sup> indicates that, notwithstanding some tightening up of the rules, it remains true, as a committee investigating the subject in 1898 asserted, that "it is impossible to find a more marked contrast between two institutions than that presented by the [British] House of Commons and the Chamber of Deputies in the individual initiative of the latter and the ministerial initiative of the former."<sup>2</sup> Neither as to the introduction of bills and resolutions nor in other ways has the French back-bencher suffered any such eclipse as that which has overtaken the regimented private membership at Westminster. His position is far more like that of the American congressman. By the same token, the government dominates the scene much less

<sup>1</sup> During the same period, 475 *projets* were introduced. A. Lefas, "La réforme des méthodes du travail parlementaire," *Rev. des Sci. Polit.*, Oct.-Dec., 1929, p. 511.

<sup>2</sup> *Chambre des Députés, Documents Parlementaires*, 1898-99, p. 1492.

completely, and more time is wasted in speech-making on proposals of doubtful worth.<sup>1</sup>

The commit-  
tees at work

Once introduced, a bill, whether a *projet* or a *proposition*, is normally referred forthwith to the appropriate committee. A given measure may, of course, be of interest to two or more committees, and for that contingency the French have the interesting plan of asking one of the number to assume primary jurisdiction, while the others may designate a non-voting representative to attend the chief committee's meetings, and are expected to give the Chamber the benefit of their own observations. Committee work is heavy. Meetings are rarely less frequent than once a week, and often almost daily; and though effort is made to allow time for them by holding no sittings of the chambers in the forenoons nor usually on Wednesdays, one or more committees are often found grinding away when the chambers are themselves in session. There are other obstacles. With the exception of the one which considers the budget, the committees of the Chamber have at their disposal only the 11 bureau rooms, and all committee work is much hampered by the fact that it is frequently impossible for a chairman to find any place in which his group may meet. Nor, for that matter, is there adequate stenographic service; as a rule, a single secretary is assigned to two or three committees, with inevitable complications when more than one of the number desire to meet at the same time. These conditions, fortunately, do not prevail in the Senate, where each committee has its own room and secretary.

The work of French committees presents several other more or less novel features. Contrary to practice in both Great Britain and the United States, each committee elects its own chairman; and chairmanships are eagerly sought. Again, unlike Anglo-American usage, the sessions of committees are always closed to the general public—that very familiar American device, the public hearing, being quite unknown. To be sure, experts from the outside may be invited in; and the author of a private mem-

<sup>1</sup> The explanation of these differences is to be found mainly, of course, in the nature of the respective party systems. The party solidarity of the normal British cabinet and its support in the House of Commons make for domination of the legislative scene at any given moment by "the government." Coalition governments in France, supported only by evanescent *blocs* in Parliament, enjoy no such preëminence. See pp. 577-578 below.

ber's bill may attend in a consultative capacity, provided he is willing to retire whenever the committee votes. But not even ministers can gain entry unless the committee assents.<sup>1</sup> Still more remarkable is the rôle played by the *rapporteur*, or reporter. In Great Britain, a government bill, after committee stage as well as before, is in direct charge of a minister, who explains it, defends it, and pilots it through to passage. In the American Congress, practically all bills are reported and managed by the chairmen of the committees to which they have been referred. In France, when a bill (*projet* or *proposition*) is taken up by a committee, the first step normally is to designate one of the members as reporter for that measure; and when deliberations are ended, it is that person—not the committee chairman, nor yet the minister in whose province the bill falls—who shoulders main responsibility for securing action by the Chamber. Having prepared a printed report presenting the text of the bill as recast by the committee,<sup>2</sup> the arguments supporting it, and sometimes (though not always) the views of the minority, he goes before the Chamber prepared to bear the brunt of the attack and to marshal and direct the defense. He may receive assistance from the committee chairman and, in the case of a government bill, from the interested minister; but his remains the guiding hand. This curious twist by which an ordinary private member acquires precedence over committee chairman and minister alike has been criticized on the ground that it confuses functions and divides responsibilities.<sup>3</sup> The defense may be offered, however, that a *rapporteur*, being responsible usually for only one bill in a session, has a chance to concentrate his best effort upon it, and that, in practice, the material prepared by him for the Chamber is frequently a model of exhaustiveness and lucidity.

The vigor and independence of the great committees in the two houses is indeed a principal reason—along with the party situation—for the weak parliamentary position occupied by the cabinet in France as compared with that of the British cabinet. Even in legislation, with which alone they originally were supposed to have to do, they recognize no obligation merely to rubber-stamp

The functions of *rapporteurs*

Relations of committees to ministerial responsibility

<sup>1</sup> Compare usage in committees of the German Reichstag, p. 744 below.

<sup>2</sup> Committees occasionally go so far as to substitute and report out a bill of their own.

<sup>3</sup> See, for example, W. B. Munro, *The Governments of Europe* (2nd ed.), 474.

the government's proposals. Though more accurately reflecting the balance of political forces in the chambers than did committees made up under the old system, they still bring many a government bill to eventual defeat. But with equally important results they have extended their control into the domain of administration. Comparing the list of standing committees in the Chamber with that of ministries, one finds a striking correspondence; for nearly every government department there is a like-named committee, in one house if not both. Nor is the arrangement accidental. Parliament rightly considers the criticism and supervision of administration to be one of its major functions; and though the committees were not designed—certainly not more than incidentally—as arms or agencies for this purpose, they have become such in preëminent degree. Endowed with (or assuming) full powers of inquiry and investigation, they keep the executive departments under surveillance such as rarely is experienced in Great Britain. Sometimes the relations between particular committees and corresponding departments are amicable, and even cordial. More frequently, however, if not positively hostile, they at least are grounded upon mutual fear that coöperation will result in a surrender of prerogative. By and large, important committees like those on foreign affairs and finance are likely to direct policy quite as much as the responsible ministers, who dare not jeopardize their already precarious position with regard to Parliament by defying or ignoring them. Thorny at best, the pathway of cabinets is unquestionably made harder by the unwillingness of vigilant, powerful, and often overzealous committees to consult and coöperate.<sup>1</sup>

Sacred to parliamentary procedure in English-speaking coun-

<sup>1</sup> This phase of the situation is discussed at length in L. Rogers, "Parliamentary Commissions in France," *Polit. Sci. Quar.*, Dec., 1923, where there is also an account of the interest taken in Great Britain and other European countries in the French system of articulation of committees with ministries. The following summary of the ministers' position in relation to the chambers is worthy of being quoted: "In its [the cabinet's] relation to Parliament, it is both very weak and very strong. It has little control over the parliamentary time-table; it must make reasonable room for private members' bills; its policy is under the constant scrutiny and even correction of the parliamentary commissions; it is exposed at any time to dangerous interpellations. On the other hand, its control of a vast amount of patronage, its strict hold on the entire administrative machinery, and its power of establishing subordinate legislation by decree give the cabinet powers which would be quasi-autocratic were it not for the precariousness of its tenure." R. Soltau, in *Encyc. of the Soc. Sci.*, IX, 379.

tries is the well-known scheme of three readings. In France, however, there are in the Chamber of Deputies only two readings, the first being merely the formality of introduction, the second taking place after a measure comes back from committee. Debate is influenced to no small extent by the physical arrangements under which it is carried on. The hall in which each body sits is semicircular, with as many seats and desks as there are members to be accommodated. In the front center stands, on a platform about ten feet high and reached by stairs on either side, the president's desk and chair; and immediately in front of this is the somewhat lower platform, or "tribune," which every member who desires to speak at any length is required to mount.<sup>1</sup> On either side of the tribune are stenographers, whose reports of the proceedings are printed each morning in the *Journal Officiel*. The first tier of seats in the semicircle, facing the tribune, is reserved for ministers; next to this is a row for use of the committee whose bill is up for consideration; behind are ranged the remaining members of the Chamber, with the radicals on the president's left shading off into the conservatives on his right. Designed for only 300 members, the hall of the Chamber of Deputies is crowded and poorly ventilated, and business progresses amid bustle and confusion quite unknown in the better-equipped and more sedate Senate.

What happens after committee stage

Arrangements for debate

Committee stage on a bill having been passed, the printed *exposé* of the reporter, including the text of the measure as recommended, is distributed among the members of the Chamber, and at the appointed time—at least three days afterwards—debate begins. First of all, there is discussion bearing simply upon the nature and objects of the bill in general. At its close, the president puts the question of whether the Chamber desires to "pass to the articles," *i.e.*, take up the measure in detail, section by section. If the vote is in the negative, the bill is dead, and, if it is a private member's measure, it cannot be revived until after an interval of three months. If, however, the decision is favorable, consideration of the measure in detail proceeds. At this time, but not before, amendments are in order—both such as may be offered from the floor and such others as may previously have been filed with the committee. If need be,

The course of debate

<sup>1</sup> Except for interpolated remarks from excited members, the American practice of speaking from the floor is almost unknown.



debate is suspended until the committee can consider such amendments, although sometimes the members can confer on the spot and verbally report their conclusions forthwith. In any event, a bill materially altered by amendments is likely to be sent back to committee for painstaking revision before final passage. Ministers and committee reporters are entitled to be recognized whenever they desire to speak; and not only ministers and under-secretaries who do not have seats in the Chamber, but other outsiders as well, especially administrative and financial experts, are—contrary to British and American practice—allowed, or even invited, to mount the tribune. The general run of members wishing to take part in debate indicate their desire by inscribing their names on lists kept by the secretaries, and the president recognizes members who request the floor in the order shown by the lists, except that he usually tries to let supporters and opponents of the pending measure be heard alternately.<sup>1</sup> The only noteworthy differences in Senate procedure are (1) that the general and detailed discussions of a bill are regarded as two readings, instead of stages or phases of a single reading as in the Chamber, and (2) that amendments are offered less freely from the floor, being as a rule submitted to the committee in time to be considered along with the general text of the bill.

Limitation of  
debate

On motion of any member, closure may be applied in the Chamber of Deputies by majority vote, provided that a representative of the government is not at the time speaking or desirous of doing so, and provided further that at least two persons of opposing views have had a chance to speak on the matter in hand. Believing that even this rather strong rule needed stiffening in the interest of conservation of time, the Chamber in 1926 adopted a time-schedule according to which, while ministers may still speak as long as they like, committee reporters and chairmen, authors of interpellations, and first signers of *propositions des lois* may hold the floor only one hour, authors of amendments half an hour, and all other persons (unless otherwise specified) 15 minutes. In the Senate, any member (or minister) may demand that a special procedure, *la procédure d'urgence*, be applied to a given measure, and if the majority

<sup>1</sup> Members are even allowed to speak by proxy, *i.e.*, to write out a speech and entrust the delivery of it to some other person.

agrees, the final reading is dispensed with and the fate of the measure decided at the close of the general discussion.

Debate in the Senate is earnest but urbane and dignified, and full galleries are rarely attracted. For entertainment, not to say excitement, the spectator goes rather to the Palais Bourbon, where, if the question be one of live interest, both benches and galleries are likely to be crowded. Debate in any legislative body has its dull stretches, but in the Chamber these are not numerous. Instead of the mere sparring that often proves so boring at Westminster and Washington, there is clash of argument against argument, principle against principle, personality against personality—merciless cut and thrust, and often rude jousts which grow rougher and rougher until by dint of persistent clamor of his bell the president succeeds in restoring calm. Hardly any parliamentary body in the world is more susceptible to the power of oratory. A brilliant speech brings even the deputy's political enemies to their feet, cheering a sonorous peroration as a work of art even though they will presently vote to kill the measure that inspired it.<sup>1</sup> Nor is there partiality to any particular style of oratorical effort. Both M. Poincaré and M. Briand were exceptionally effective as speakers from the tribune, yet it would be difficult to conceive of two men having less similar methods of appeal: Poincaré, always the lawyer, reserved, calculating, full of meticulously assembled information, fortified with armloads of documents; Briand, human, suave, negligent of books, and with no taste for statistics, but hypnotizing his hearers with the music of his voice and the mellow persuasiveness of his argument.

Parliamentary oratory

Neither chamber uses the *viva voce* form of mass voting employed in Great Britain and America. "Rising" votes are taken in both, and in the Deputies there is also voting by show of hands. On all tax proposals, however, and in other cases where in the upper house 10, and in the lower 20, so demand, there must be a *scrutin publique*, or public vote. Most commonly, this involves neither a roll-call nor a dispersion of the members to division lobbies, but rather the passing of an urn up and down

Methods of voting

<sup>1</sup> There is little personal rancour, even among the bitterest political opponents. "Deputies," says Lord Bryce, "will abuse one another in the Chamber and forthwith fraternize in the corridors, profuse in compliments on one another's eloquence. The atmosphere is one of friendly *camaraderie*, which condemns acridity or vindictiveness." *Modern Democracies*, I, 259.

the rows of seats, in order that each member may drop in a white slip of paper (with his name on it) if he wishes to vote "Yes" and a blue slip if he wishes to vote "No." A deputy may authorize another member to drop in a slip for him, and it is not uncommon for all of the votes of a party group to be deposited by one person, however much the proceeding may look to the uninitiated like stuffing the ballot-box—or urn. If on announcement of the result, a majority in the Senate or 50 in the Chamber so demand, the final form of voting is brought into play. The members file across the tribune, and as they mount the steps, their names are checked and a secretary hands them a small wooden ball. Individually, they deposit their white or blue cards in an urn and descend the other steps, returning the ball as they do so to another secretary, who completes the check. This takes time, but has the merit of requiring every member to cast his own ballot; and with voting thus limited to those actually present, the result may differ from that obtained by balloting from the floor. Since 1885, the names of deputies voting in a *scrutin publique* have been permanently recorded and published.

Questioning  
the ministers

Any member of either branch of Parliament is entitled to ask questions of the ministers. Sometimes a query is put orally and answered on the spot, the questioner being allowed 15 minutes in which to state his inquiry, the minister as much time as he wishes in which to reply, and the questioner five minutes more in which, if he desires, to make a rejoinder. Or, the question may be both submitted and answered in writing; hundreds, in fact, are so submitted every session, and the answers printed in the *Journal Officiel*. To either an oral or a written question, a minister may refuse to reply only on the ground that "reasons of state" make it unwise to do so. At all events, the incident passes with no general debate, and no vote.

Interpella-  
tion

Such questions are a means, known under all cabinet governments, of holding ministers accountable for administrative acts and policies. But French usage provides (in addition, of course, to budgetary control) another and far more effective means—one which, though defensible if employed with discretion, has proved liable to serious abuse. This is interpellation. An interpellation is also a demand upon the government for information. But unlike ordinary questions, it gives rise to debate and a vote.

Simple questions commonly relate to minor details of administration. Interpellations more often are directed (or at all events are supposed to be) to matters of policy, and may come singly from individual members or in batches from a half-dozen or more who join forces for the purpose. The only point at which the government is protected against them is in connection with the annual budget. Presented invariably in writing, interpellations are read to the Chamber by the presiding officer,<sup>1</sup> who thereupon sends them to the appropriate minister if they relate specially to the affairs of a single department or to the premier if, as is more frequently the case, they involve the policy of the government in general. The premier or other minister may refuse to "accept" the interpellation, again on the ground that a public answer would be incompatible with the national interest. Only a very obvious disadvantage, however, will justify refusal in the Chamber's eyes, and normally a date will be fixed for a reply.<sup>2</sup> The time having arrived, the interpellating member reiterates and presses his question, the minister gives his reply, and then, instead of the incident being closed as in the case of ordinary questions, a general debate ensues, at such length as the members desire, after which a vote must be taken. By the time the discussion is over, several motions may be pending, among them certainly one to the effect that "the Chamber, having heard the explanation of the minister, pass to the order of the day," and another expressing the hostile point of view of the questioner. If a motion of the first sort prevails, the government has weathered the storm, and the Chamber and ministers go about their business; if one of the opposite tenor, the government has no alternative but to resign.<sup>3</sup>

The French notion is that interpellation is a necessary means of holding ministers responsible and preventing the rise of an independent and dangerous bureaucracy. The English have not found it so; although it is only fair to add that in the field of administration the British Parliament's control falls considerably below the French ideal, or, for that matter, the English ideal also

*Its dubious effects*

<sup>1</sup> They are not unknown in the Senate, but are to be associated chiefly with the Chamber of Deputies, where their most undesirable features have developed.

<sup>2</sup> Under the rules of the Chamber, Fridays are set apart for the purpose, but the numbers are such that other days are encroached upon also.

<sup>3</sup> In most cases, the ministers insist upon a vote carrying an express assertion of confidence in the government.

of a generation or two ago.<sup>1</sup> So long as employed in a sincere effort to obtain information from ministers (though simple questions ought to suffice for that), and in respect to matters of genuine importance, there may be something to be said for the device. The difficulty is, however, that most commonly the object is not information, and frequently the matter inquired about is not important. Every ministry at Paris is at best in a potentially weak position because of its internal artificiality and the general absence of effective party discipline—conditions which lay it open in peculiar degree to precisely the sort of attack that interpellation provides. Not only, therefore, does the practice consume an inordinate amount of time in the chambers,<sup>2</sup> but it becomes a favorite means of heckling the government and driving it from office, often for no reason at all except that ambitious and meddlesome deputies enjoy the discomfiture of their political opponents and perhaps hope themselves to turn up in a ministry if one were newly formed. More French cabinets have been overthrown in this way than in any other. If not inherently a "vicious" institution, as ex-President Lowell long ago pronounced it, interpellation is certainly one of the most grossly abused.

Relations between the chambers in legislation

Constitutionally, the two branches of Parliament are co-equals in legislation, except that money bills must first be introduced in, and passed by, the Chamber of Deputies. For a long time, there was controversy as to whether the Senate could with propriety amend money bills, but the matter has now been compromised, in practice, on the basis that while amendments may be proposed, the upper chamber will give way if the lower one refuses to accept them. Most bills of major importance make their first appearance at the Palais Bourbon. None, however, can become law until agreed to in precisely the same form by both houses, and this raises the question of what happens when a measure passes the two bodies in somewhat different form. The answer, in a word, is that if the bill is one in which the government is interested, the ministers, passing back and forth between the chambers, seek to iron out the difficulty by getting a surrender here and a

<sup>1</sup> See pp. 296-297 above.

<sup>2</sup> As a random example may be cited an interpellation of 1929, dealing with the policy of the Poincaré government toward Alsace and Lorraine, which lasted through nine sessions of the Chamber, virtually excluding other business from January 24 to February 9.

concession there, and even, upon occasion, by threatening to resign unless one or both houses recede from positions they have taken; while if the measure is sponsored only by a private member or group, the chambers may, if so disposed, seek agreement through the medium of a joint committee, analogous to the joint conference committee in the American Congress.<sup>1</sup> The Senate's function has always been considered as primarily that of slowing up the legislative process when the suspicion exists that an impetuous Chamber has outrun public sentiment or otherwise acted unwisely. Its favorite method of doing this is not precipitate and violent clash, but rather revision, inertia, and delay. Many an imposing measure coming over from the Palais Bourbon is artfully trimmed of its more ambitious provisions; many a one is gravely referred to a committee and left to die; or if not that, at all events is not brought forth until the Chamber, having cooled off on the subject, is in a frame of mind to accept a more conservative bill. Sooner or later, the Senate will yield if public opinion grows sufficiently insistent. But on subjects like the taxation of incomes, social insurance, labor legislation, public ownership, and woman suffrage, a vast amount of pressure is likely to be required.

Budgetary procedures the world over are growing more similar, and one will not be surprised to learn that those of France, borrowed in part from Great Britain, have much in common with the procedures of that country. Estimates of expenditure and revenue for a given fiscal year are assembled and integrated by the finance ministry; a budget is prepared and laid before Parliament for acceptance; finance proposals make their first appearance in the lower house; even the fiscal year has, since 1930, opened on the same day as the British, *i.e.*, April 1. There are, however, differences. Whereas in Britain, financial legislation for a given year is never enacted in definitive form until the year is far advanced (usually early August), in France it normally is complete before the year begins, although there have been times when it was not so, and when, in order to keep the government going, Parliament was obliged to vote "provisional twelfths," after the analogy of the British "votes on account."<sup>2</sup> Whereas,

Financial legislation: the budget

<sup>1</sup> In a few instances, *e.g.*, a military service measure of 1880, government bills also have been referred to such a committee. A plan for joint sittings of the two houses at times of conflict has often been proposed, but never adopted.

<sup>2</sup> See p. 278 above.

furthermore, in Britain many taxes are collected by virtue of continuing laws, and many expenditures, e.g., the Civil List and interest on the national debt, are authorized for indefinite periods, in France it is a principle—though not stipulated in the constitution, and occasionally violated in practice—that no tax may be laid for more than a year at a time, and all revenues and expenditures find place in the annual budget and resulting *loi de finance*.<sup>1</sup> The French budget (like the American) differs from the English, too, in allocating anticipated revenues to particular services in great detail, leaving far less discretion to spending and supervising authorities. Finally may be noted the fact that in a French budget expenditures are divided into two categories, “ordinary” and “extraordinary,” the former being such as are of a recurring nature, like the upkeep of the navy, and the latter such as may be considered more or less temporary or special, such as outlays for carrying on a war. Money with which to meet extraordinary expenditures being derived commonly from borrowing, a fictitiously balanced budget sometimes results from arbitrary and unjustifiable transference of outlays to the extraordinary list from the ordinary list where they properly belong.

The budget  
in committee

The budget for a year forms a voluminous *projet*, with hundreds of chapters, and upon being presented to the Chamber of Deputies by the minister of finance, is forthwith turned over to the budget committee. Here, further significant difference from English procedure appears. At Westminster, as we have seen, the estimates are not sent off to a smaller body, a standing or special committee, but are considered only in committee of the whole, where the ministers can keep a firm hand on such discussion as limited time permits.<sup>2</sup> Furthermore, under the memorable rule of 1706, the committee may propose no new taxes, no increase of tax rates, no new expenditures, and no larger outlays than those that have been asked. At the Palais Bourbon, such restrictions do not apply—at least not so rigidly. To be sure, the committee will not insert, strike out, increase, or decrease items without consulting with the ministers and perhaps other officials concerned. Furthermore, in the last fifteen or twenty years it

<sup>1</sup> Sometimes, however, in the case of direct taxes, in a special law passed in advance of the general *loi de finance*. By still more notable exception, the financial law of 1923 was, by its own terms, made applicable also to 1924. See A. Esmein, *Éléments de droit constitutionnel* (8th ed.), II, 460-461.

<sup>2</sup> See p. 271 above.

has shown increasing disposition not to go strongly against ministerial desires, especially in the matter of expenditures. To do so in one item is likely to lead to doing so in another, jeopardizing the entire budget, and perhaps creating a situation in which nothing will be left for the ministry but to resign. Neither the committee nor the Chamber itself, however, is prepared to forego completely the right to raise money and vote its use in amounts or on lines not asked by the government; and in this important respect, French budgetary usage is like our own in the United States.

In any event, after three or four months of intensive work, with no public hearings but a great deal of use of subcommittees, the mighty *dossier* reappears in the Chamber in the form of a *loi de finance* incorporating the proposed changes and recommended for passage. Then follows—as in the case of any other *projet*—discussion on the floor of the Chamber, first on general features and afterwards on the articles, or items, one by one. Here again matters do not go as in Britain. Private members may introduce amendments of almost any nature, not excluding proposals for expenditure for objects (except new offices or pensions) not included in the pending budget at all. Proposals of the latter sort must indeed surmount some high hurdles—approval by the finance minister as well as by the budget committee—before they will be taken up by the Chamber. Nevertheless they sometimes lead to important changes in the financial plans for a year. Different from British practice, too, is the amount of detailed consideration which the budget receives. As a rule, the autumn session, running to some three months, is devoted almost entirely to it. Few items pass without discussion; no large sums are voted, as at Westminster, without scrutiny; the work of the government comes in for a thorough airing, though under a rule which forbids interpellating ministers on matters arising in the debate. Discussion ranges widely—sometimes on irrelevant lines. But under a regulation of some 20 years' standing, no “rider” is permitted to be tacked on the developing *loi de finance*. As each group of items is disposed of, a vote is taken, and at the end the *projet* is voted on as a whole.

The budget  
debated and  
voted

Formerly, with the fiscal year starting on January 1, the budget bill sometimes failed to reach the Senate in time to be acted upon before the year opened, making it necessary to carry along the



spending departments for a time by means of "provisional twelfths." With April 1 substituted for the earlier date, this contingency no longer arises. The Senate, however, does not tarry over the budget as does the Chamber. The committee to which the *projet* is referred soon completes its work, and a vote on the floor follows. There is no hesitation to introduce changes, which the Chamber, when the bill is returned to it, may or may not accept. Sometimes such changes are upward; more often, they are by way of denying demagogic appeals for increased expenditure which an undisciplined Chamber has momentarily proved unable to resist. In case of deadlock, the minister of finance seeks to smooth out the difficulty, occasionally with the aid of a conference committee; and at last the budget act is ready to be published in the *Journal Officiel* and promulgated from the Élysée.<sup>1</sup>

Auditing of  
accounts

Parliamentary control over the national finances involves also a critical supervision of the spending of money and a detailed examination of accounts. The financial transactions of the executive departments are scrutinized, first of all, by an exalted and independent body known as the *Cour des Comptes*, or Court of Accounts, dating from 1807 and consisting of members appointed for life by the president of the Republic. Not counting clerical help, the Court's staff numbers upwards of 150. Its inquiries extend to all members and agents of the government who have to do with receiving or spending public money; it makes known all irregularities on which criminal prosecutions can be based; and once a year it submits to the president of the Republic a general report, which, in turn, becomes the basis of a final report to Parliament. This report received, and action under it taken (if any seems necessary), the financial transactions of the year are formally endorsed and the record closed by a joint resolution of the Senate and Chamber.

All in all, the French Parliament deserves a good rating among the world's principal legislatures. The average ability of its

<sup>1</sup> An excellent account of French budgetary procedure, with comparison of other systems, is R. Stourm, *Le budget*, trans. by T. Plazinski as *The Budget* (New York, 1917). An older treatment by a standard authority is G. Jèze, *Le budget* (Paris, 1910). Cf. A. Esmein, *Éléments de droit constitutionnel* (8th ed.), II, 456-484. On French public finance generally, see H. Fisk, *French Public Finance* (New York, 1922), and R. Haig, *The Public Finances of Post-War France* (New York, 1929).

members compares favorably with that in the British House of Commons or the American Congress, and proceedings are as a rule on a high level. It would not be expected, however, that in this age of world-wide disparagement and criticism of legislative bodies the French chambers would go unscathed. In point of fact, they are the object of vigorous attack from many sides. At one extreme are the Communists, who, aiming at a dictatorship of the proletariat, would do away with the existing type of parliament completely. At the other is the ultra-conservative *Action Française*, demanding a "traditional, hereditary, anti-parliamentary, and decentralized monarchy."<sup>1</sup> There is also something of a Fascist movement. The strong attachment of most Frenchmen to the Republic leaves little chance for any of these destructive elements to have its way; yet the fact cannot be blinked that the nation's parliamentary system is not quite so deeply rooted as that of Great Britain and, like even the latter, faces the problem of justifying its continued existence. Between the extremes mentioned stand many critics who believe in parliamentary government, yet would more or less drastically modify existing arrangements. The Socialists would suppress the Senate, and the Radical-Socialists would continue it only if elected on a broader basis and shorn of power ultimately to defeat the will of the Chamber. Proponents of functional, or professional, representation would do away with the present geographical allocation of senators and deputies and substitute a system under which, as they believe, the interests and desires of the nation would be mirrored more faithfully.<sup>2</sup> Other groups look rather to reforms of procedure. Some would curb the power of the great committees; others would introduce more effective forms of closure; the Republican Federation would restrict the initiative now enjoyed by private members in finance legislation; many would put interpellation under more restraint.

A proposal of great interest on still a different line is that Parliament be reduced to a somewhat humbler rôle in the governmental system by substantially increasing the power and independence of the executive. In England, an oft-heard complaint is, as we have seen, that the cabinet has become a dictator

Problems of  
parliamentary  
government

<sup>1</sup> G. Bourgin, J. Carrère, and A. Guérin, *Manuel des partis politiques en France* (Paris, 1928), p. 43.

<sup>2</sup> A. Mitwally, *La démocratie et la représentation des intérêts en France* (Paris, 1932).

and Parliament a rubber-stamp.<sup>1</sup> In France, both president and cabinet are comparatively weak, Parliament unquestionably dominant. Many consider that the country would be better off if the situation were reversed. Some look toward an independent executive of the American type. More would like to see the weapon of dissolution brought into effective use. Nearly all would be pleased if the executive could somehow be rescued from its present plight as a football of partisan politics.<sup>2</sup> Up to 1934, there was no prospect of early developments on any of these lines. The small-scale producers, peasants, small employers, independent craftsmen, traders, and *rentiers* who form the backbone of the nation did not want strong government—as long as weak government managed somehow to carry on without taxing them too much, and as long as the economic system showed no signs of actually breaking down. The crisis of the year mentioned, however, brought governmental reform to the fore; and, as indicated above, some strengthening of the executive seemed at the date of writing a rather likely result of a situation which everyone admitted to be serious.

<sup>1</sup> Cf. pp. 292, 300 above.

<sup>2</sup> On these and other proposed improvements, see R. K. Gooch, "The Anti Parliamentary Movement in France," *Amer. Polit. Sci. Rev.*, Aug., 1927.

## CHAPTER XXVII

### POLITICAL PARTIES

The English or American student who approaches the subject of French party politics must start by divesting himself of many preconceptions; for he is entering a world totally different from that which he already knows—a world in which even the term “party” has meanings as yet unfamiliar to him. As an Englishman or an American, he is accustomed to see his country normally divided more or less evenly between two, or at the most three, principal parties, each of which is strong enough to gain, from time to time, full control of the government and, having gained it, to hold it for a period of years. Each of the parties has extensive national and local organization, with officers, committees, treasuries, platforms, publications, and what not. Each at election time chooses candidates and aids them in winning at the polls; and, after they are elected, each expects them to subordinate their wills, at least on important matters, to the principles and programs of the party as formulated by party conventions and leaders and in party caucuses. Whips keep the members in line in legislatures, and central offices or other instrumentalities maintain morale and discipline throughout the country. The parties, furthermore, have existed for a long time— in certain instances for generations—and may be expected to endure for a good while to come. Though differing on numerous matters, their divergences are usually not diametrical, but only relative. On many major concerns there is apt to be little genuine dissimilarity of view; and on fundamentals such as the form, character, and general objectives of the government, there is likely to be no disagreement at all.

Contrast between French and Anglo-American parties

For nearly all of these conditions, there are no parallels in France. To begin with, instead of two or three main parties, there are many; in the Chamber of Deputies as composed early in 1932, no fewer than 13 political groups were officially recognized; in its successor, elected in May of that year, 17. In the next place, it rarely or never happens that any one so-called

The French multi-group system

party gathers sufficient strength to command a majority in the Chamber or to form a ministry; coalitions of at least three—often more—are regularly required. Such combinations are by their nature short-lived, and consequently unable as a rule to pursue a program very far beyond its initial stages. Furthermore, with very few exceptions, no party bears any real resemblance to parties in English-speaking countries. What are euphoniously termed parties are frequently only hastily improvised groups, with names that mean little or nothing. Many of these groups exist only in the Chamber of Deputies; some only in the Senate; few, indeed, are found simultaneously in Parliament and throughout the country at large; even if so found, they are likely to disappear before the observer's eyes like mist. Of nation-wide organization, there is little, and the bulk of deputies and senators are chosen in the constituencies less upon the strength of party labels than upon the individual records of the candidates and their locally-made personal statements of principle and policy. Except again in one or two cases, little disciplinary authority is exercised. Finally, contrary to the situation in English-speaking lands, there is often complete and vehement disagreement among French political groups on constitutional fundamentals, including the perpetuation of republicanism itself.

To be sure, the situation here described is by no means peculiar to France. All Continental European countries have numerous parties—sometimes, as in Czechoslovakia, several separate sets of parties maintained, respectively, by different racial elements. But parties in some of the countries—notably Germany (at all events, before rival parties were banned by decree of the National Socialist dictatorship in 1933),<sup>1</sup> Switzerland, and the Scandinavian countries—have decidedly more of a nation-wide character, and considerably more organization and stability, than those of France; and the latter country's situation may be regarded as farther removed from the order of things in the English-speaking world than that of any other state, except perhaps for the one-party régimes of Italy, Russia, and "Nazi" Germany. The opinion may be hazarded that the party system is the most difficult phase of French public life for an Englishman or American to understand.

<sup>1</sup> See p. 782 below.

When one turns to inquire into the reasons for things being as they are in France, a fully satisfying explanation is not readily forthcoming, although several contributing factors are easy enough to discern. Racial and religious divergences which operate to multiply parties in several neighboring countries do not exist; France is exceptionally homogeneous racially, and though religion plays a rôle in politics, it cannot be held primarily accountable for the party situation. Forty years ago, ex-President Lowell suggested that the French multi-group system of that day was an evidence of political immaturity, that peoples have to learn by hard experience the advantages of bi-party, and that France had not yet enjoyed self-government long enough to have mastered the lesson. Mr. Lowell would, of course, be the first to recognize that, while there may have been some point to the observation, it goes but a short distance toward explaining things. To begin with, the further lapse of time has seen the party groups increased rather than diminished in number. Furthermore, one recalls that England achieved a bi-party system almost as soon as there were parties at all, and certainly without any conscious preference for it over some different arrangement.

Some reasons  
for it

Contributing to the French situation described are undoubtedly four or five main factors. First, the Frenchman is inclined to be theoretical rather than realistic and practical in his politics. Attached to some particular principle or ideal, he insists upon holding out for it, and refuses to compromise or unite with people of different views. This makes for numerous small political groups and frustrates fusion into great parties. Even the campaign utterances of candidates are likely, as Mr. Lowell long ago pointed out, to be philosophic documents rather than statements of concrete policy.<sup>1</sup> This shades off into a second closely related factor, *i.e.*, the Frenchman's individualistic approach to political affairs. As an eminent Spaniard has remarked, politics is to the average Englishman or American a game, to be played normally by two opposing sides and, despite occasional contrary appearances, in a spirit of good humor and even tolerance.<sup>2</sup> Taking for granted the necessity

<sup>1</sup> *Governments and Parties in Continental Europe*, I, 105.

<sup>2</sup> S. de Madariaga, *Englishmen, Frenchmen, and Spaniards* (New York, 1928), 158-159.

of coöperation, one willingly subordinates his own convictions and preferences to party decisions and discipline. In France, it is otherwise. The typical voter refuses to allow others to do his thinking for him, spurns the dictates of any group that presumes to try to control him, and rarely is found running with the pack. Politics is a battle (one may almost say a free-for-all fight), rather than a game. A further factor, already mentioned, is the cleavages that exist, not merely on ordinary and more or less ephemeral issues, but on fundamental matters—the relation of church and state, the advantages of functional over territorial representation, regionalism as opposed to centralization, the desirability of restoring monarchy, the rôle of government itself in modern society—all of them questions upon which individuals and groups assume positions of the most varied and irreconcilable sorts. The issue is not a simple, definable one between Right and Left; otherwise, we might look for a gradual shaking down of two opposing sets of political elements into two great parties. Discussion of each of the problems mentioned, besides many others, releases cross currents of opinion that keep the scene perpetually agitated and frustrate nearly every tendency toward compromise and coagulation.

Other even more tangible causes of political pluralism and fluidity exist. One is the peculiarly close and personal relation of the deputy to his constituents, leading the former to assign to party ties a purely secondary importance, and certainly to have little regard for party discipline except when it happens to run on lines consistent with his supreme "ambassadorial" function and interest. Another factor, if one may judge by the experience of Great Britain on opposite lines, is the inactive status of the power of dissolution. If a deputy belonging to a group momentarily supporting a coalition government knew that failure to heed orders from his leaders might have the result of putting him to the trouble and expense of running for reelection, he might think twice before casting a rebellious vote. As matters stand, he has little to lose by deserting his chiefs; it is they who, if matters come to the worst, will have to give way; the individual deputy may, indeed, profit from a reshuffling of the offices. As a final factor, one may mention the practice of interpellation, which, contributing as it does to the instability of ministries adds generally to political confusion.

Whatever weight be assigned to particular causes, there can be no doubt about several significant effects of the party situation as described. In the first place, the volatile, kaleidoscopic nature of party politics makes it more difficult, by and large, to ascertain public opinion upon a given matter than in a country like England or the United States, where, notwithstanding frequent blurring of issues, elections often result in clear-cut popular decisions on questions on which two, or at the most three, great parties have taken diametrically opposite positions. To be sure, the French people sometimes speak with an unmistakable voice. As a rule, however, decisions are reached by ministers and Parliament, on lines largely of their own devising, rather than by the people directly, and one can be somewhat less certain how the electors would themselves decide, and by what majority, than in the case of English-speaking countries. In the second place, the multiplicity of political groups affects the electoral process, especially by stimulating demand for proportional representation. Next, it has the effect, as already shown, of requiring all ministries to be coalitions, and of helping to produce ministerial instability, with all of its well-known disadvantages. Further, it slows up legislation and decisions upon policy, since little can be done except after long-considered compromise. When a given party is in power in Great Britain or Australia or Canada, it can map out a program, prepare measures for carrying it out, and procure reasonably prompt adoption of them by a legislature dominated by its supporters. No single party in France is ever so situated. In addition—and this is serious—there is an almost constant division of responsibility for what is done or not done. The Liberals can be held definitely responsible for the successes and failures of government in Great Britain in 1906-14; the Conservatives for those of 1924-29. But who shall say that this party or that, this group of leaders or the other, had similarly clear and concentrated responsibility for what happened in France in any comparable period in the last generation? Finally, the ineptitudes and failures of parliamentary life, from which has sprung much of that recent criticism of Parliament, and of representative government itself, which is associated with the term "antiparliamentarism," are traceable in no small degree to the condition of parties, which indeed colors and gives

Some practical effects



tone to contemporary French government in nearly all of its phases.<sup>1</sup>

Political  
groups in the  
Chamber:  
general as-  
pects

Coming now to a closer view of the situation described on general lines in the foregoing pages, we take note of party organization (1) in the Chamber of Deputies, (2) in the Senate, and (3) as developed for electoral purposes in the country at large. When a newly elected Chamber meets, one of the first things to be done is, naturally, to elect officers and make up the standing committees. It would surprise an uninitiated visitor from Great Britain or the United States, however, to be told that before these tasks can be proceeded with, the deputies must form themselves into groups having the general appearance of parties—this for the reason, if no other, that standing committees can be made up only by combining lists of nominees put forward by the recognized groups.<sup>2</sup> To be sure, most deputies have been elected, in the constituencies, under one political label or another. But this, as a rule, means little. Once the members are assembled at the Palais Bourbon, they feel free to seek out congenial spirits, or to fall in with a leader who is rounding up a following, and to inscribe themselves as members of one or another of the several groups—usually 10 or 12 in number, but sometimes more—which, each under a name of its own, are found at every session. Some groups will contain only 15 or 20 deputies; others, upwards of 100, or even beyond. Joining is, however, a voluntary act, and one may, if he chooses, announce himself as *non-inscrit*, i.e., as belonging to no group; and, curiously enough, “no group” deputies not only are allotted representation on the committees, but often effect a form of organization among themselves and sometimes play an important rôle in the Chamber’s affairs.

Once formed, the groups are seated in the Chamber in the supposed order of their radicalism, with the ultra-conservatives on the right, the moderates in the center, and the radicals on the left. Too much significance should not, however, be attached to a group’s precise location, for especially the lesser ones often

<sup>1</sup> The best analysis of the causes and results of the multiplicity of parties is still A. L. Lowell, *op. cit.*, I, 101–137. For an interesting view that, contrary to what might be expected, the group system makes for a less hesitant and divided loyalty to the national (as distinguished from party) interest, see C. J. H. Hayes, *France: A Nation of Patriots*, 26.

<sup>2</sup> The party groups here spoken of must be distinguished from the bureaux (see p. 555 above), with which they have no connection.

differ but slightly from their neighbors, and the fact that one sits farther to the right or the left than another does not necessarily mean that it is actually more conservative or more radical. Nor can the names adopted by the groups be taken as an infallible indication of political faith. The Republican-Democrats in a typical Chamber are extremely conservative; the Republicans of the Left do not sit on the left, but in the right center; the Radical Socialists are not only far less radical than the regular Socialists, but really not Socialists at all; Left Radicals sit in the center; and so on, to the infinite confusion of the uninformed. To discern the shades of opinion that separate some of the groups requires, as Professor André Siegfried has remarked, "the subtlety of a theologian expounding the Athanasian creed."

Each group has a chairman, holds conferences, and, in general, functions more or less like a parliamentary party at Westminster; and it is a combination, or *bloc*, formed from such groups that constitutes the support upon which the ministry at any given time must depend. Poor enough support it naturally is. For not only may the *bloc* be rent asunder overnight, but the groups themselves have little control over their members, and even less stability. After a group caucus has reached a decision, individual members are guided by it or not as they severally choose. The decision may have been to abstain from voting on a given question, but members may disregard it and perversely proceed to vote. It may have been to support a pending measure, but in the face of it they may vote the other way. They may, indeed, desert the group altogether. Not for them, at all events, the iron rule of whips so familiar at Westminster. Formerly, it was not at all unusual for a deputy to belong to two or more groups simultaneously. This is less common now, yet adherents rarely take their membership very seriously. The individualism which they displayed when seeking election carries over into the Chamber, and they think little of breaking with the group of their earlier choice and joining another. As a consequence, groups are all of the time dissolving and reforming, being—to quote Siegfried again—"as uncertain and changeable as the clouds."

With so much by way of warning against any undue impression of stability and permanence, we may nevertheless note the fairly continuous existence of a number of major groups in

The panorama from  
Right to Left:

## 1. Right

recent years.<sup>1</sup> Starting with the less effectively organized and numerically less important Right, there is, first, the Republican Democratic Union (*Union républicaine démocratique*), a group of appreciable size (41 members) which of late has acquired a good deal of coherence and organization. Pronouncedly nationalistic, it opposes the limitation of armaments, supports a strong foreign policy, objects to dealings with Russia, and denounces the war-debt agreements. In internal affairs, it is an inveterate defender of "*les intérêts*," the rallying point of big business and finance against Left programs of nationalization, labor legislation, and the like; in short, it stands resolutely for private property, unrestricted liberty of private enterprise, and full economic individualism. In the domain of religion, it champions a program under which the teaching rights of religious congregations would be restored, full choice of schools (parochial or state) would be left to parents, and church property formerly confiscated would be restored.

Also on the right is a group of 16 deputies, commonly known as the Popular Democrats (*Démocrates populaires*), which, although it concurs with the foregoing group in opposing the Left, nevertheless equally opposes the extreme Right. Agreeing with the Left in one regard, *i.e.*, that the protective rôle of the state should be enlarged, the Democrats insist that this should come about in an orderly fashion, accompanied and facilitated by widespread popular education. The majority of the group are liberal Catholics, but they do not favor the restoration of the Concordat system abolished in 1905, asserting merely that religious peace involves respect by the government for religious liberty and respect by Catholics for the republican régime.

## 2. Center

In the center are found, in addition to unclassified moderates, four groups of respectable size: the Radicals of the Left (*Gauche radicale*), the Republicans of the Left (*Republicains de Gauche*), the Social and Radical Left (*Gauche sociale et radicale*)—all center groups despite their names—and the Democratic and Social Action group (*Action démocratique et sociale*). On most questions, they maintain a distinctly opportunist point of view.<sup>2</sup>

<sup>1</sup> The figures are taken from W. H. Mallory (ed.), *Political Handbook of the World, as of January 1, 1933* (New Haven, 1933), 62, and are, of course, to be taken as representing only the situation as it stood at the time indicated.

<sup>2</sup> Since all except the Social and Radical Left adhere to the Republican Democratic Alliance, their policies can most conveniently be summarized in connection with a later statement concerning that party. See p. 584 below.

Except on economic matters, however, their policies incline to the left rather than otherwise, and they are usually willing to cooperate with the Radical-Socialists, although not with the regular Socialists. Political writers commonly affirm that the Radical Left is the most radical and the Democratic and Social Action the most conservative of the four, with the Left Republicans occupying a mediating position. It should, nevertheless, be remembered that "... the Center is no longer ... a place of concentration; it is, on the contrary, a zone of the parting of the waters, permitting two divergent slopes: one toward the Left, already radical on account of anticlericalism and republican discipline; the other toward the Right, already subject to the attraction of Catholicism, of social authority, of organized high finance. What infinitely complicates the situation is that the line of division exists within each group of the Center."<sup>1</sup>

The Left consists chiefly of two relatively well-organized and powerful groups: the Radical Socialists (*Groupe radical et radical-socialiste*), 160 in number, and the Socialists (*Groupe du parti socialiste*), 128 in number. There are, in addition, two minor groups: the Republican Socialists and French Socialists (*Groupe républicain socialiste et socialiste français*), and the Communists (*Groupe communiste*), with respective memberships of 29 and 10. Mention should be made also of the Independent Left (*Gauche indépendante*) with 38 members, which, although its deputies adhere to the Republican Democratic Alliance, is really a Left rather than a Center party. 3. Left

The Radical Socialists represent principally the petty bourgeois class, including broadly the small farmers, the retail merchants, and the great body of small holders of government bonds (*petits rentiers*), from which it follows that the group is concerned specially with the defense of individual rights, seeking, on the one hand, to curb the predatory power of the great economic interests, and, on the other, to restrain the more radical parties of the Left from measures which would run counter to the individualistic point of view of the group members and their supporters. In religious affairs, the Radical Socialists are anti-clerical, opposing relations with the Vatican and disapproving of all non-secular schools. The regular, or Unified, Socialists are Marxist in doctrine, adhering to the Second, but refusing adher-

<sup>1</sup> A Siegfried, *Tableau des partis en France* (Paris, 1930), 173.

ence to the Third, International. They have retained the group label adopted after the fusion of two earlier Socialist parties in 1905 (which explains the term "Unified"), and in spite of internal differences, they commonly refuse to collaborate with so-called capitalistic groups in a coalition ministry. The group has at times, however, consented to work to some extent with the Radical Socialists and other left groups (excluding the Communists) in a *Cartel des Gauches*<sup>1</sup>—a policy dictated partly by the post-war necessity of combatting the *Bloc National*<sup>2</sup> and partly by the now abandoned list system of election. More recently, there has been a tendency to return to the earlier policy of non-participation. Though drawn heavily from that quarter, the strength of the Unified Socialists is not confined to the great industrial centers. The trend of French politics in recent years has been, in general, toward the left, and the Socialists have gained the support of many constituencies, especially in the Midi, which are agricultural rather than industrial. Professor Siegfried believes that this development, which, on its face, would be rather difficult to account for, involves only a change of party label and not an actual change in political point of view.<sup>3</sup> In doctrine, the Republican Socialists and the French Socialists are both located somewhere between the Radical Socialists and the Unified Socialists. The French Socialists have been in existence since 1919, when a group that disapproved of the swing to the left in Unified Socialist policy seceded and set up separately. Both the Republican and the French Socialists support close coöperation with the League of Nations, denounce the financial oligarchy alleged to be threatening republican institutions, and demand rehabilitation of a harmonious union of the Left groups.<sup>4</sup> The Communist group (to be commented on below) was organized in 1920, following a split in Socialist ranks at the congress of Tours over the question of adhering to the Third International. The members work in close coöperation with, and under the direction of, Moscow.

The situation in the Senate is much like that in the Chamber,

<sup>1</sup> See p. 586 below.

<sup>2</sup> See *loc. cit.*

<sup>3</sup> *Op. cit.*, 163. A convenient summary of Socialist doctrines may be found in a pamphlet by Léon Blum, *Pour être Socialiste* (4th ed., Paris, 1925).

<sup>4</sup> Since 1926, the Republican Socialists and French Socialists, though still to be distinguished, have had a common organization.

except that (a) the groups rarely exceed from four to six, (b) long terms and renewal by thirds impart somewhat greater stability, (c) there is more strength toward the right, and (d) the Communists are unrepresented. Running one's eye from right to left over the august body at the Luxembourg, one notes (1) a group of seven adherents to the royalist tradition; (2) a pro-clerical and decidedly conservative Republican Left (*Gauche républicaine*) of 18 members; (3) a Republican Union (*Union républicaine*) of 69 members, occupying a right center position; (4) a center group of 32, the Democratic and Radical Union (*Union démocratique et radicale*), anti-socialist in opinion and corresponding broadly to the Radical Left in the Chamber; (5) a Democratic Left (*Gauche démocratique radicale et radicale-socialiste*) with 159 members, and with views such that, if in the Chamber, these persons would doubtless be classified as French Socialists and Radical Socialists; and finally (6) a small group of Unified Socialists (at present 15), which since 1927 has maintained a separate existence.

Political  
groups in the  
Senate

As already explained, these Chamber and Senate groups, and others like them which spring up from time to time, are essentially localized in the respective legislative bodies in Paris and have little part, as such, in politics and elections throughout the country; in other words, they are parliamentary rather than popular. Superimposed upon this crazy-quilt pattern are, however, certain broader organizations which come closer to the English and American concept of political parties; and at the risk of further mystifying readers who already have been dizzied by the foregoing enumeration, five of these affiliations which have organization and strength throughout the country may be brought to view. Starting once more on the right, we find the Republican Federation (*Fédération républicaine de France*), formed by fusion of the Progressist and two other parties in 1903, and constituting the outstanding conservative party today. Its principles and policies are essentially those of the Republican Democratic Union mentioned above, and, under the presidency of Louis Marin, it has a fairly effective organization in most parts of the Republic, based on a federation of units existing in the various departments. A national conference or congress is held once a year, and a national council is maintained, composed in part of ex-officio members and in part of persons chosen by the

Parties which  
function for  
electoral pur-  
poses

Republican  
Federation  
and Repub-  
lican Demo-  
cratic Alli-  
ance

conference. Next, one comes upon a center party, the Republican Democratic Alliance (*Alliance républicaine démocratique*), founded in 1904 by Carnot. Firmly opposed to socialism and to political activities on part of the Catholic clergy, it finds its chief support among the great economic interests of the country and in the Chamber enlists the voting power of the Democratic and Social Action group, the Left Republicans, the Independent Left, and the Radical Left (once more, how meaningless the names!). Organized throughout the country very much as is the Republican Federation, the Alliance is noted, among other things, for the able and exhaustive reports submitted to its annual congresses by its *commissions d'études*, or committees of inquiry.

Radical  
Socialists and  
Unified So-  
cialists

To this point, the English or American observer hardly ceases feeling that he is a stranger in a strange land; neither Federation nor Alliance reminds him very much of the parties of Stanley Baldwin and Franklin D. Roosevelt. Sighting two important parties on the left, however, he begins to feel more at home. In the Radical Socialist party he finds the first attempt to maintain a thorough nation-wide organization, grounded upon a system of committees in the communes, carried upward through departmental and regional federations, and capped by a huge national executive committee (1,875 members in 1928), which brings together all of the party's senators and deputies plus representatives chosen by the departmental federations in proportion to their numbers. There is also an annual congress, and a *bureau*, or board, of 35 chosen by the congress. Here, too, for the first time one encounters serious attempts to impose discipline upon a party following—a task to which the executive committee formerly devoted itself, but which in 1927 was delegated to a special vigilance committee (*Comité supérieur de Vigilance et d'Arbitrage*), charged with investigating and giving publicity to all cases of defection from the party's rules and principles. The other main party on the left, the Unified Socialists, goes even farther. It also has a nation-wide hierarchy of committees, an annual congress, a dues-paying membership, and party newspapers and treasuries, and in addition it seeks, like the Labor party in Great Britain, to regulate the conduct of those who bear its label in the national legislature. Candidates in the constituencies are expected to submit their platforms for approval by the national organization; if elected, they are held, as well as can be

contrived, to the principles and policies of the party; and if they break over too far, they may be, and sometimes are, required by the local party authority to resign their seats.

The zenith of organization and discipline is reached, however, in the Communist party. Here, authority comes, not from within the party itself, but from Moscow, and the function of the party leaders is almost solely to execute instructions from that source. If difference of opinion arises, there is nothing for the dissidents to do but accept the discipline asserted over them or submit to ejection from the party. Contrary to usage in other parties, the local units (*cellules*) are established on a professional and industrial, not a geographical, basis. The citadel of communism is, of course, Paris, but considerable strength is shown in other cities, with scattering support in various rural areas. Total voting strength runs to somewhere near a million.

Communists

It is a paradox of French character that politically it leans to the left but socially to the right; and the power of its conservative social inclinations is such that the politics of the country becomes a ceaseless, sometimes rapid,ebb and flow as between left and right. "The Center," says Professor Siegfried, "has never been able to remain in power for any length of time, because to obtain a majority, it must either depend on the Right—which means the Church—or on the Left, which means socialism or even communism. The center of gravity thus alternates between the Right and the Left, but fortunately it can never wander very far from the Center—where, however, it is seldom poised for long." <sup>1</sup> Seldom, indeed, as we have seen, is the political center of gravity poised for long *at any point*. Nevertheless, the shifts continually occurring have less significance than is often attached to them abroad, for, as suggested by the passage quoted, they never carry the country very far out toward the extremity of either Right or Left. "The Frenchman," Professor Siegfried observes further, "may carry his rifle, now on his right shoulder, now on his left, but he seldom falls into the ditch"—which is but another way of saying that the highly volatile party structure of France does not, in its actual effects upon national policy, work out so very differently from the simpler and more stable structures of English-speaking countries.

Political oscillations since 1914

As illustrating the nature of cabinet coalitions and the oscillat-

<sup>1</sup> *France: A Study in Nationality* (New Haven, 1930), 61.



*Bloc National  
and Cartel des  
Gauches*

ing tendencies of politics, some experiences of post-war years may be cited briefly. At the close of the conflict, the *union sacrée* of all parties patriotically proclaimed at the beginning had so far broken down that the Clemenceau cabinet not only contained no Socialists but had the vigorous opposition of all Socialist and most other radical groups. On the other hand, bourgeois groups which had stood by the government to the end, actuated by a sense of solidarity on the towering issues of the day and by hostility to the domestic and international program of the Unified Socialists, consolidated their position by drawing together in a *Bloc National*, ostensibly a continuation of the "sacred union," but in truth a union only of the then dominating conservative forces;<sup>1</sup> and in the first post-war parliamentary election, in November, 1919, this combination routed the Unified Socialists (from which the Communist element had not yet withdrawn, so that the entire party could be indicted as "red"), winning more than 400 of the 610 seats and giving France one of the most conservative Chambers that the Republic has ever known. As pointed out in another place, this result flowed not only from a palpable bracing of the electorate against what it conceived to be the menace of Bolshevism, but also from manipulation by the National Bloc leaders of the new electoral system of 1919, with its hybrid form of proportional representation.<sup>2</sup> Problems of peace, however, proved quite as difficult as those of war: taxes mounted; living costs remained high and the value of the franc low; strong-arm methods employed by Premier Poincaré (including occupation of the Ruhr) to coerce Germany into the payment of reparations not only failed but irritated opinion in France itself; and while the National Bloc was disintegrating to the point of losing all semblance of even external unity, the Unified Socialists built up a *Cartel des Gauches*, or Left Bloc, including the Radical Socialists, the Republican Socialists, and the moderate wing of the Radical party, so that when the parliamentary elections of 1924 came round, the new combination was prepared to turn the electoral law of 1919 to its own advantage and win a decisive victory. Herriot became premier; President Millerand, accused by the

<sup>1</sup> The *Bloc* was engineered by the Democratic Alliance as the leading element, and included the Republican Federation, the Republican Socialists, the Liberal Action, and a number of Radicals, though not the Radical Socialist party as such.

<sup>2</sup> See p. 537 above.

Cartel of exceeding his constitutional powers, was forced to resign; and relations with Germany were placed on a more amicable basis.

Problems of budget-balancing and currency stabilization refused, however, to yield to the best efforts that a rapid succession of Cartel governments could put forth; whenever a capital levy or some other drastic proposal was brought forward, support from the more moderate elements melted away. The upshot was that in the summer of 1926, Poincaré, repudiated two years previously on his foreign policy, was persuaded to step into the breach with a view to heading a government approaching the character of the original *union sacrée*, the emergency created by the desperate financial situation being regarded as hardly inferior to that created by the outbreak of the war in 1914. The National Union cabinet which the ex-president and ex-premier now formed had the support of practically all political elements—Right, Center, and Left—except the Unified Socialists and the Communists; and, with such backing, reflected in almost complete docility on the part of a thoroughly frightened Chamber, it was able in remarkably short time to save the franc, stabilize the currency, and, by bold economies, put the budgetary situation on the road to considerable improvement. The center of gravity of the Poincaré régime was well toward the right, and after a parliamentary election of 1928, in which the premier secured a clear vote of confidence, it was still more so. Already, however, such support as came from the left—mainly the Radicals—was wearing thin; and although, following an outright Radical secession in 1929 on issues growing out of the government's alleged surrender to clerical influences, Poincaré was able to form a new ministry, ill health and growing political embarrassments led him, in midsummer of 1929, to retire to private life. The franc saved and the national crisis overcome, other political elements that had been yearning for their accustomed freedom once more went their own way; and from 1929 until the setting up of the Doumergue "government of national union" during an exceptionally severe political crisis in February, 1934, ministries rose and fell pretty much on the old lines, with center or left combinations dominating.<sup>1</sup>

The financial  
crisis and  
since

<sup>1</sup> Party history in recent decades is reviewed briefly in R. H. Soltau, *French Parties and Politics, 1871-1930* (London, 1930), Chaps. iii-vii; and A. Siegfried, *France: A Study in Nationality*, Chap. iv.

The outlook  
for bi-party-  
ism

Many times the question has been raised as to whether France may be expected eventually to achieve a bi-party system, or at all events a consolidation of political forces into perhaps three or four strong and stable parties. No man, of course, can tell. Those who think that they discern some tendency in this direction cite such evidences as (1) the increased rôle of great political *blocs* since 1900, notably the *Bloc National* and the *Cartel des Gauches* mentioned above; (2) the growing strength and solidarity of certain individual parties, particularly the Unified Socialists; (3) the stiffening of party discipline, not only in Unified Socialist ranks, but among various groups of the Right; and (4) the frankness of parliamentary leaders in deploring the handicaps and absurdities of the existing group system. Neither singly nor taken together do these considerations, however, carry much conviction, and one may doubt whether the country will again in the near future come as close to a bi-party or tri-party system as it actually stood some fifty years ago, when three reasonably compact parties, and only three, shared the support of practically the entire nation.<sup>1</sup>

Extra-parliamentary  
groups:

No comment on the French party system would be adequate without mention of a few of the organizations which, although, as such, neither represented in Parliament nor seeking to be, nevertheless, by contributing to electoral funds, promoting propaganda, and carrying on lobbying activities, exert much influence upon parliamentary groups and upon political affairs generally. Agencies of similar nature exist, to be sure, in all countries.<sup>2</sup> But from the party situation described above they draw larger opportunity for influence in France than in most other lands.

1. Clerical  
and national-  
istic organi-  
zations

Though less important today than a few years ago, the League for French Action (*Ligue de l'Action française*) clearly deserves first mention. Founded by a group of young intellectuals in 1898 as a nationalist and anti-Semitic society, it became definitely royalist in 1901 and thereafter, in addition, devoted itself to defense of the Catholic church and promotion of an intense nationalism. Following the separation of church and state in

<sup>1</sup> Conservatives, Republicans, and Radicals. See F. A. Ogg, *The Governments of Europe* (1920 ed.), 484-486.

<sup>2</sup> On groups of this character in the United States, see E. P. Herring, *Group Representation before Congress* (Baltimore, 1929).

1905, it attracted, as a rallying force of opposition, most of the Catholic clergy and hundreds of thousands of Catholic communicants. As time passed, however, it fell under suspicion in church circles, for the reason that its leaders—notably Charles Maurras—gave evidence of being interested in Catholicism less as a religion than as a symbol of authority and centralized power; on many occasions, indeed, they were found openly deriding basic principles of Christianity. The upshot was that in 1926 a papal encyclical, prepared as early as 1914 but withheld for 12 years, formally denounced the organization, thereby dealing it a body blow. In later days, it has struggled along with little support except from people of monarchist persuasion. Out of sympathy with parliamentary government, and favoring a corporative form of organization not unlike that introduced a few years ago in Fascist Italy, it has never sought direct representation in the Chamber or Senate, although Léon Daudet, one of its leaders, was twice a candidate in Paris for a seat at the Palais Bourbon.<sup>1</sup>

Similar in its intense nationalism is the League of Patriots (*Ligue des Patriots*), formed in 1882 to agitate for a war of revenge against Germany. Until the World War, this organization stood firmly against the republican régime, championing General Boulanger in his day and, in general, the notion of a "popular" dictatorship created by plebiscite. It, too, was bitterly anti-Dreyfus. Some indication of its nationalistic doctrines can be gained from the fact that its two principal leaders have been Paul Déroulède and Maurice Barrès. Of late, the League has largely dropped its anti-republicanism in order to combat the influences of Bolshevism and internationalism. Of more recent origin is a National Catholic Federation (*Fédération nationale catholique*) established to resist the anti-clerical tendencies of the Herriot ministry of 1924, and now coöperating closely with an active Committee of Catholic Defense and other similar agencies. Among still other conservative organizations of the sort, the Republican National League (*Ligue républicaine nationale*) may be mentioned, both because of the political importance of its leaders, and by reason of the significance of certain of its political

<sup>1</sup> For fuller accounts, see R. H. Soltau, *French Political Thought in the Nineteenth Century* (New Haven, 1931), Chap. xii, and especially C. T. Muret, *French Royalist Doctrines Since the Revolution* (New York, 1933), Chaps. xiii–xv. Cf. C. Maurras and L. Daudet, *L'Action française et le Vatican* (Paris, 1927).

views. Known familiarly as the Millerand League, the organization has been supported by (in addition to its once famous founder) François-Marsal, Pierre-Étienne Flandin, François Poncet, and André Maginot. It stands preëminently for increasing the power of the president as a means of putting an end to the present parliamentary confusion, and as one way of doing this, would strengthen the right of dissolution by doing away with the necessity of obtaining the consent of the Senate.

## 2. Economic associations

One of the principal organizations intermediate between the government and the great economic interests of the country is the Republican Committee of Commerce, Industry, and Agriculture (*Comité républicain du Commerce, de l'Industrie, et de l'Agriculture*). In theory at least, this Committee studies all economic problems and presents to the government its views as to the most desirable solution of each. It also investigates and pronounces upon all projected changes in labor legislation and in commercial and fiscal regulations. Though at one time adhering to the Radical Socialist party, the organization now inclines rather to the Republican Democratic Alliance, and, backed by many large economic interests, it has the coöperation of practically all leading politicians of the Center and Right Center. Equally important in the economic field is the Union of Economic Interests (*Union des Intérêts économiques*), which one competent observer considers to have had more political influence in recent times than any other organization of the kind.<sup>1</sup> Nearly 700 smaller associations, covering almost every phase of economic life, are linked up in the Union. In advance of each parliamentary election, the organization prepares a program of economic legislation, grounded upon defense of private property and of free opportunity for the individual entrepreneur, opposition to all further (and many existing) developments of state socialism, and demand for obligatory consultation by the government with the great economic associations on all legislative proposals affecting economic affairs; after which it draws up and publishes a list of all candidates for the Chamber of Deputies, classifying them with respect to this program as *pour*, *pour avec réserves*, *doutex*, and *contre*. Apparently the Union also employs money at election time in a fashion well known to the student of

<sup>1</sup> G. Bourgin, J. Carrère, and A. Guérin, *Manuel des partis politiques en France*, 241.

American politics, for, following the 1924 election, the Chamber appointed a committee to investigate its use of funds.

No list of the principal associations influencing political affairs would be complete unless it included the League for the Rights of Man and of the Citizen (*Ligue des Droits de l'Homme et du Citoyen*). Formed in 1898 to defend Dreyfus, this organization has ever since kept up a fight against any and all attempts to invade individual civil or political rights. At times it has procured liberation of persons who have been unjustly condemned, and on other occasions it has been instrumental in blocking the passage of laws lending themselves to possible violation of individual liberty. The League has an active membership of some 150,000, including such men as Ferdinand Buisson, Léon Blum, and Paul Boncour.

3. League for the defense of private rights

Finally may be noted the famous General Confederation of Labor (*Confédération générale du Travail*), formed in 1902 by the fusion of two principal labor organizations then in existence. Long harassed by inevitable internal dissensions over the methods by which workingmen can best gain their ends, *i.e.*, reform or revolution, the Confederation a decade ago cast the die definitely for reform; whereupon adherents of the Moscow method retired to establish a confederation of their own (the *Confédération générale du Travail unitaire*). Supported by both the Radical Socialists and the Unified Socialists, the C. G. T. exerts influence over numerous subsidiary organizations and is, in general, a political factor of no mean rank.<sup>1</sup>

4. Organizations of labor

<sup>1</sup> Important works dealing with the French party system of earlier days include L. Jacques, *Les partis politiques sous la troisième république* (Paris, 1913); A. Zévaès, *Le parti socialiste de 1904 à 1923* (Paris, 1924); and R. H. Soltau, *French Parties and Politics, 1871-1921*, with a supplementary chapter on the period 1922-30 (London, 1930). R. L. Buell, *Contemporary French Politics* (New York, 1920) deals extensively with parties of the war and early post-war periods, and E. M. Sait, *Government and Politics of France*, Chap. x, more briefly with the same subject. A Siegfried's *Tableau des partis en France* (Paris, 1930), and his *France: A Study in Nationality* (New Haven, 1930), containing largely the same material, are admirable interpretations. The standard work, however, may be said to be G. Bourgin, J. Carrère, and A. Guérin, cited above. Mention should be made also of P. T. Moon, *The Labor Problem and the Social Catholic Movement* (New York, 1921), and D. J. Saposs, *The Labor Movement in Post-War France* (New York, 1931). Two illuminating brief accounts are H. Finer, *Theory and Practice of Modern Government*, I, 600-620, and W. L. Middleton, *The French Political System*, 62-84. Cf. H. F. Goswell, *Why Europe Votes*, Chap. ii.

## CHAPTER XXVIII

### LAW AND JUSTICE

A system  
with many  
distinctive  
features

In an earlier chapter dealing with the origins and development of private, as distinguished from public, law in England, it was mentioned more than once that the legal system of that country is fundamentally different from that of France, and furthermore that while the law of English-speaking lands the world over, including the United States, is basically English, the law of most Continental European nations west of Russia, and of nearly all of the Latin American republics, is of the same stock and character as the French. Nor does the divergence stop with merely the form and content of the law. It extends also, somewhat less profoundly, to the nature, methods, and procedures of the courts in which the law is interpreted, applied, and enforced. In turning to the subject of French law and justice, we therefore are entering a field in which there is at least as much that is new and distinctive as in the areas of administration, legislation, and party government already surveyed.

How French  
law arose:

1. The Ro-  
man element

For the origins of French law, as indeed of English law also, it is necessary to go back a long way. To begin with, it must be recalled that the country which we know as France formed at one time—under the name of Gaul—a part of the far-flung Roman Empire. The same was true of England northward to the Firth of Forth. But whereas in the latter country there was practically no survival of Roman institutions and culture from the days when the Caesars ruled, so that any subsequent influence of Rome upon legal concepts and principles must be traced rather to a belated and not very powerful penetration from the Continent during the Middle Ages, in France the law of Rome, once planted, was never uprooted and has persisted as a major factor throughout all later development. Naturally, it was in the southern and more thoroughly Romanized portion of the country that the legal system projected from the Tiber took firmest hold; and for centuries after political control collapsed under the impact of the German invasions, that area was

known as the *pays de droit écrit*, or land of the written, *i.e.*, Roman, law. But the north, likewise, never wholly escaped from Roman influence; and when in comparatively recent days the country arrived at a single, uniform legal system, the Roman heritage supplied much of the framework of the structure.

Meanwhile, however, in the Middle Ages the field was taken more largely by another sort of law, *i.e.*, custom. France became the classic land of feudalism, and all over the country, particularly in the north, arose regional or local systems of legal usage, sprung in part from ancient Germanic practices but largely evolved on the spot by officials to whom it fell to make seigniorial rules and administer seigniorial justice. To a degree, the *coutumes* of petty jurisdictions tended to merge into bodies of law having force throughout entire provinces or other extended areas. But never in mediaeval or earlier modern times were they welded into a single nation-wide system comparable with the English common law. On the opposite side of the Channel, powerful kings, beginning with William the Conqueror, stretched out the long arm of royal power and, by means of justices sent throughout the land to try cases and make decisions in the king's name, gradually procured uniformity of legal usage and interpretation. In France, though strong kings of later centuries contrived important extensions of royal power, regional law became so deeply entrenched and was so jealously guarded in the different parts of the land that in the main it survived until less than a hundred and fifty years ago. As late as the middle of the eighteenth century, Voltaire could say that a traveller in his country had to change laws about as often as he changed horses. Originally, the customary law was unwritten. In time, however, jurists began making up collections of it for different regions—*livres coutumiers*, they were called—and judges' clerks sometimes compiled registers of notable decisions. By the sixteenth century, the customs applying throughout particular provinces or regions of the *pays coutumiers* had in most cases been formally recorded. Indeed, codification became a matter of official action. Drafts prepared by the king's judicial agents in the districts were submitted to the central government, referred back for adoption by provincial or other assemblies, and finally proclaimed by royal commissions; after which the texts could legally be altered only by the same pro-

2. Custom



cedure. From first to last, however, there was no consolidation of the different systems into one.

### 3. Royal legislation

To all this was added not only a luxuriant growth of canon, or ecclesiastical, law, but also, after the fifteenth century, a considerable amount of royal legislation in the form of ordinances or edicts applying sometimes to the entire country, sometimes to specified sections only. Before such edicts became effective, they must be "registered" by provincial judicial bodies known as *parlements*.<sup>1</sup> But this set up no serious impediment, because there was a well-known procedure by which the king, in case of opposition or delay, could force registration in a "bed of justice." In days before 1614, when the Estates General was still convoked from time to time, a meeting was likely to be followed by the promulgation of a *grande ordonnance* covering matters on which the estates had urged or demanded that something be done; and a good deal of new law, as well as much revision of older law, arose in this way. After 1614, *grandes ordonnances* continued to make their appearance, chiefly now in the form of codifications of particular branches of law. Thus in the reign of Louis XIV alone, a code of civil procedure was issued in 1667, a forest code in 1669, a code of criminal procedure in 1670, a code of commerce on land in 1673, and a code of commerce on sea in 1681. By 1789, the country accordingly had a rather imposing superstructure of royally made or codified law, extending throughout its length and breadth. The great mass of law beneath was, however, still regional or local.

### The Revolution and the Napoleonic codes

Recognizing that an integrated, uniform system of law is a prime requisite of national unity, and convinced that a great part of the country's legal heritage was antiquated and required reworking to fit it for a liberalized state and society, the early Revolutionary assemblies addressed themselves to displacing regional systems by a nation-wide system, and to restating legal rules and principles on lines compatible with the new political and social order. One body of customs after another was swept away; ordinances were overhauled or rescinded; new and uniform laws, in the form of statutes, were enacted on land tenure, inheritance, marriage and divorce, criminal procedure, and other subjects. It was thought desirable, too, that the law, both new and old, be completely assembled in systematic codes; and though

<sup>1</sup> In earlier times, the term always denoted, not a legislature, but a court.

pressed by other and even more urgent duties, the Constituent Assembly, and in its turn the Convention, got this work also under way. The first of these bodies gave the country, in 1791, its first penal code; the second, four years later, a new code of criminal procedure. Especially was there demand for a civil code. The *cahiers* of 1789 urged that one be promulgated, and the constitution of 1791 definitely promised it. To rework, round out, and consolidate so vast a branch of law was, however, a truly formidable task, and though each of the early assemblies tried its hand at the job, no great headway was made until Napoleon threw his indomitable energy into the undertaking.

Napoleon is best known to the world as a soldier. He was, however, a statesman and administrator of the first order, and from few of his exploits did he derive more satisfaction than from seeing through to a finish the mighty enterprise of revising and codifying the whole sweep of French jurisprudence. Entrusting completion of the civil code to a commission which he appointed, he arranged for difficult and disputed matters to be threshed out by a newly created expert body known as the Council of State, over whose deliberations he often presided in person; and on March 31, 1804,—less than two months before the Empire was proclaimed—the new *Code Civil des Français* was promulgated in its entirety. Afterwards, in 1806, came a code of civil procedure; in 1807, a code of commerce; in 1808, a code of criminal procedure; and in 1810, a penal code—all based to a considerable degree on codes of Bourbon days, but incorporating such rules and practices of later origin as were deemed worthy of preservation. Love of symmetry and order inclines the French people to a greater fondness for systematized codes of law than has ever been shown by English-speaking nations. The Revolutionary and Napoleonic codifications were, however, made a practical necessity by swift and sweeping changes in the existing legal order such as no English-speaking country has ever experienced; in a period when old regional systems were being supplanted wholesale, the only way of preventing chaos was to set out the new nation-wide system in full, orderly, and explicit form. To be sure, some American states and certain British dominions have acquired civil codes, criminal codes, and codes of procedure. As a rule, however, these codes are less comprehensive than the French; while Great Britain herself has undertaken codification

in only a yet more limited way. In Continental Europe, in Latin America, and in Japan, the French codes have had profound influence. The Civil Code, for example, will be found in Belgium practically intact; in Germany, it was given up by Baden and the Rhine provinces only when a nation-wide civil code was promulgated in 1900, and has indeed left its impress deeply on that code; the civil law of the Netherlands, Italy, Spain, Portugal, Greece, Egypt, and most of the Latin American states is patterned closely upon it.<sup>1</sup>

French law  
today

The law of France today consists primarily of the Napoleonic codes as amended and broadened during the century and a quarter since they were promulgated. With the passage of time, the original texts naturally grew out of date; new conditions and needs, especially those flowing from the growth of industry and other economic changes, rendered some provisions obsolete and called for the modification or addition of others. The codes, however, were never discarded; rather, they have simply been revised, supplemented, and extended. As early as 1832, the code of criminal procedure and the penal code—as also that part of the code of commerce pertaining to bankruptcy—required reworking. Again, under the Second Empire the criminal and penal law was remodelled to bring it into line with newer and more humane principles. In 1897, important changes were made in criminal procedure, and in 1904 advantage was taken of a celebration of the centenary of the Civil Code to give that monumental *corpus* of law an extensive overhauling. On all of these occasions, and many others not here mentioned, opportunity was seized to work into the appropriate code whatever new law on the given subject had accumulated since the last revision; and thus the codes are maintained as no mere museums of legal rules and principles, but as living, dynamic organisms.

French law has, therefore, two or three outstanding characteristics. In contrast with the situation in the eighteenth century, it is, in the first place, a uniform system of law, applying equally from the Belgian border to the Mediterranean. In the

<sup>1</sup> S. Amos, "The *Code Napoléon* and the Modern World," *Jour. Compar. Legis. and Internat. Law*, Nov., 1928; *Le Code civil, Livre du Centenaire* (Paris, 1904)—a volume of valuable essays by French and other lawyers. When, some years ago, the founder of a new dynasty in Persia telegraphed to Paris for the *Code Napoléon*, a boxful of commentaries, and a commission of French jurists, he was doing in effect only what many a creator of a new régime had done before him.

second place, in contrast with the law of English-speaking countries, it is a written law. There is, of course, much written law in Great Britain and the United States. Nevertheless, in both lands that great mass of jurisprudence known as the common law is largely unwritten—at all events, for the most part not assembled in formal codes. In France, there is virtually no law that cannot be read in the books. In the third place, French law, though at many points rooted back in custom, is enacted or statutory law. In Britain, the common law, essentially judge-made, is, as we have seen, basic, and statute, though growing in amount, hardly does more than fill up gaps. But in France, nearly all of the law is to be found in the great codes and their revisions, formally voted by some constituted authority, and in such acts of Parliament as have not yet attached themselves to any code. It is true that in deciding cases French judges have some regard for precedents and to a limited extent bend the law in this direction or that, thereby at least partly determining what the law shall be. The theory of French jurisprudence, however,—totally different from the British—is that judges will decide each and every case on its independent merits, applying the law as it comes to them from the legislature without addition or subtraction, and aiming only at justice in the particular case, not at conformity with precedent. And the theory is so far realized in practice that no rule of *stare decisis* has ever developed, and that such law as emanates simply from the court-room after the manner of the English common law is, if by no means negligible, at any rate rather incidental. From all these things it results that French law has the merits of tangibility, unity, symmetry, and definiteness. Nobody need have much doubt about what the law is. Indeed, it has been elaborated in such detail that, as indicated earlier, Parliament finds itself with rather less to do than the legislatures of a good many other countries. The penalty of such comprehensiveness and symmetry, and of so much deference to codes, is, on the other hand, a certain loss of flexibility; and complaint is sometimes heard that it is more difficult to keep the law abreast of social and economic developments and of changing public attitudes than across the Channel, where law is more elastic and grows by less fixed and formal processes.<sup>1</sup>

<sup>1</sup> J. Parker, *Some Aspects of the French Law* (New York, 1928), will be found useful. For history, see J. Brissaud, *History of French Private Law*, tr. by R. Howell

The judiciary  
before 1789

No part of the French governmental system called more loudly for reform when the Estates General met in 1789 than the judiciary. The country had no lack of courts, but they were not linked up in an integrated system, and the justice dispensed in them often left much to be desired. In many parts of the land, to be sure, courts had been established under direct authority of the king. The Parliament of Paris was a vigorous court of last resort, and something like a dozen provincial parliaments patterned on it rendered important service in their respective localities. Seigniorial and other largely independent local tribunals surviving from the Middle Ages, however, cluttered up the situation, as did also numerous ecclesiastical courts with claims to extensive jurisdiction; and in the relations of these with one another and with the royal courts there was little but confusion. Speaking generally, too, the level of judicial capacity and integrity was low. Judgeships and other offices having to do with justice were often turned over by the government to the highest bidder; incumbents sometimes sold their posts to other people; not a few judgeships became to all intents and purposes hereditary. Having paid well for their positions, judges were prone to recoup themselves by accepting gifts, often in money, from parties to suits.

Revolutionary  
reforms

The Constituent Assembly lost little time in deciding to reconstruct the judicial system along with the law itself; and it did so good a job that few further changes of major significance have been found necessary. First of all, it set up a system of administrative courts to handle suits arising from dissatisfaction of citizens with the orders or acts of public officials. Then it provided for judicial actions of other sorts, civil and criminal. Borrowing from England, it placed in every one of the newly created cantons a *juge de paix*, or justice of the peace. In each *arrondissement*, or district, it set up a civil court composed of five judges. In each department, a criminal court, consisting of judges drawn from the district courts, was to handle criminal cases with the assistance of a jury. A court of cassation at the capital was to give final consideration to appeals on questions of law. Judges were to be elected for a term of years; and ample safeguards were provided against bribery and other forms of

(Boston, 1912), and for bibliography, G. W. Stumberg, *Guide to the Law and Legal Literature of France* (Washington, 1931).

misconduct on the bench. Within a few years, the elective principle was set aside in favor of appointment; and from time to time structural readjustments were made. Napoleon, however, would have no difficulty in recognizing the system as it still operates in our time.

Contrary to what one would expect, the constitution of the Third Republic makes no mention of courts, beyond authorizing the Senate to sit as a high court of justice for the trial of impeachment cases and of cases involving attempts upon the safety of the state. Accordingly, the judicial system in general rests entirely upon statute. Around this omission has centered a good deal of speculation, among French as well as foreign lawyers and publicists, though it is really less mysterious than is sometimes supposed. The constitution, as we have seen, made no pretense to providing for a governmental system in all of its branches and parts. A judiciary of satisfactory character was already functioning when the constitutional laws were adopted, and was expected to continue on the existing lines. Moreover, the judicial function had been—and to a large extent still is—conceived of in France, not as distinct and coördinate with the legislative and executive functions, but only as a branch or phase of the executive, from which follows the notion that the courts are merely administrative agencies like the customs service or the prefectures and, like them, properly to be created and controlled by statute. This is but another way of saying that in France, as is also true in Britain, the judiciary has no such constitutionally determined status of independence as in the United States—although it will be recalled that the independence of the courts in our own country, while grounded upon a constitutional principle of separation of powers, is largely a product of historical development, and that the federal constitution itself makes express provision for only one court, *i.e.*, the Supreme Court.

In describing the English judicial system in an earlier chapter, attention was called to the fact that whereas all English courts belong to a single integrated system, France has two distinct systems, or sets—ordinary courts and administrative courts—each with its own judges, jurisdiction, and procedure.<sup>1</sup> The administrative tribunals are of no less interest, and of hardly less importance, than the others, and something will be said

Legal basis  
today

Two sets of  
courts

<sup>1</sup> See pp. 369-370 above.

about them presently. First, however, we must consider the courts for the trial of ordinary civil and criminal cases.<sup>1</sup>

The ordinary  
courts:

1. Justices of  
the peace

At the bottom of the scale stand, as in England, the local courts of the *juges de paix*, or justices of the peace, upwards of 3,000 in number and serving to bring the work of justice closest home to the general mass of the people. Appointed—formerly one for each canton, though nowadays for reasons of economy some are given jurisdiction over several cantons<sup>2</sup>—by the president of the Republic on nomination by the minister of justice, justices of the peace are required to have a law diploma, backed up with two years of practical experience at the bar or in the office of a court, a bailiff, or a notary, and to have passed a professional examination; and, once appointed, they are paid salaries (as English justices of the peace are not), protected against dismissal for arbitrary or partisan reasons, and put in course of promotion from grade to grade. When first provided for, in 1790, the justices were designed not so much to hear suits as to prevent them, and to this day they spend most of their time endeavoring to persuade parties to disputes to compromise their differences or accept friendly arbitration.<sup>3</sup> Being usually men of tact and probity, they have much success in these efforts. Long ago, however, they were endowed with power to hear civil cases, disposing of them finally if the amount in controversy was small (at present, up to 1,000 francs), but with right of appeal to a court of first instance if it was larger (at present, any sum up to 3,000 francs), and also with penal jurisdiction in the case of violations of police regulations or other minor offenses (*contraventions*), and even, since 1926, certain offenses of more serious nature (*délits*). Hundreds of thousands of cases of these sorts are handled every year.

2. Courts of  
first instance

Next above the justices' courts stand the courts of first instance.<sup>4</sup> Of these, there was until 1926 one in each district, or *arrondissement*—a total of 359. Partly with a view to economy, partly also because of a dearth of suitable persons for appoint-

<sup>1</sup> The functions of the Senate as a high court of justice are mentioned elsewhere and will not be brought into the present discussion. See p. 521 above.

<sup>2</sup> On the other hand, populous cities have several.

<sup>3</sup> This is but one of the ways in which French justices differ rather widely from those of England.

<sup>4</sup> Really courts of second instance, however, in so far as they hear appeals from the justices of the peace.

ment, the Poincaré ministry in the year mentioned took advantage of a special grant of power by Parliament to decree that thenceforth there should be only one such court in a department, though with provision in the case of more populous departments for sections or chambers sitting in towns other than the chief town. Under this arrangement, courts of first instance, and sections thereof sitting in separate towns, now number, in all, 132. The courts consist of varying, but usually considerable, numbers of judges, sitting as a rule in from two to four sections, whether in the same or in different towns. Attached to each court is a prosecutor (*procureur*), who, in person or by deputy, "defends the interest of society before the court." In civil matters, the court of first instance has both original and appellate jurisdiction, the latter in respect to cases involving more than 1,000 francs and carried up from the court of a justice of the peace; but all cases involving more substantial sums can be appealed still higher. In the matter of infractions of the law, the court has jurisdiction in cases of misdemeanor (*délit*), e.g., theft and embezzlement, but not in such as involve murder or other crime. Juries are not employed, but all judgments in "correctional" cases are subject to appeal.

The tribunals to which such appeals are carried form the next grade in the ascending scale, and are known as courts of appeal. Of these, there are 27 (including one in Algeria and one in Corsica), each functioning for a judicial province consisting of from one to seven departments. A court of appeal must number at least five judges; but there are usually many more, sitting in sections or chambers of five or more each. Normally, there is a civil section, a criminal section, and also a *chambre d'accusation*, or indictment section, which does the work performed elsewhere by a grand jury; and each court is equipped with a large staff of public prosecutors, assistant prosecutors, marshals, recorders, and other auxiliaries who form part of what the French call the "standing" magistracy as distinguished from the "sitting" magistracy, or judges. Nearly all of the work of these courts consists of hearing appeals, chiefly on points of law, and their decisions (known as *arrêts*) are in the great majority of instances final.

Appeals in civil cases are handled directly by the appropriate chamber or chambers of the court of appeals having jurisdiction.

3. Courts of appeal

4. Assize courts



The jury system

For criminal appeals, a different arrangement exists. In each of the 89 departments is set up every three months<sup>1</sup> a court of assize, consisting of one of the judges of the court of appeals in whose territorial jurisdiction the particular department lies, together with two associate judges drawn either from the same court of appeal or from the local court of first instance; and to these tribunals go all appealed cases of a criminal nature—cases, it should be observed, ordinarily involving offenses of the more serious sort, classed by the penal code as crimes. Here alone in the whole gamut of French justice one encounters that common feature of English and American judicial practice, the jury. In advance of every session of an assize court, 36 names are drawn by lot from the departmental voting list, and from this panel are drawn for every criminal case the names of twelve persons who in that particular case will decide the guilt or innocence of the accused, with a right (more sparingly exercised than in America) on the part of both the prosecution and the defense to challenge and cause to be rejected any number of names up to a maximum of 24. In English-speaking lands, a unanimous vote of twelve jurors is necessary to convict. In France, however, verdicts are rendered by simple majority, except that when a jury is divided six to six or seven to five, the three sitting judges, if they can act unanimously, may frame a verdict of acquittal, though never of conviction. In any event, the jury determines the fact alone, while the judges apply the law.<sup>2</sup> Two alternates sit with every jury, so that if a juror falls ill or otherwise becomes inactive, his place can at once be filled and the trial proceed without the interruption, and even the necessity of starting all over again, which such a circumstance commonly entails in England and the United States. Jury trial is not, however, indigenous to France, and many people in all walks of life consider it an unnecessary, if not positively harmful, feature of the judicial system. "Nobody," writes a leading French commentator, "entertains any illusions; there are few institutions more discredited than the jury." The courts, says another, might as well "allow justice to depend upon a throw of the dice as upon the verdict of the jury." As suggested by the last remark, a main criticism is that juries are now rigorous, now indulgent; prone

<sup>1</sup> Every two weeks in Paris, where in fact sessions are practically continuous.

<sup>2</sup> But see pp. 607-608 below.

to severity in cases involving attacks on property, but to leniency in cases of assault or other so-called *passionnel* offenses. So far as that goes, plenty of fault is found with juries in America, particularly in the handling of murder cases. But no other known device for determining guilt and innocence promises better.

At the apex of the pyramid of ordinary courts stands the Court of Cassation, or supreme court of appeal, established in 1790. Sitting at Paris, this court consists of a general president, three presidents of sections or chambers, and forty-five other judges (known technically as *conseillers*), besides a prosecutor-general and a staff of assistants; and for working purposes it is divided into (1) a chamber of requests (or petitions), which examines civil appeals in a preliminary way and decides whether they have substantial merit; (2) a civil chamber, which gives appeals recommended from the chamber of requests a final hearing; and (3) a criminal chamber, to which go all criminal appeals. The court has no original jurisdiction and in appealed cases considers only questions of law and competence rather than of fact. Furthermore, upon quashing a decision of a lower court,<sup>1</sup> it does not substitute a decision of its own, but merely sends the case back for retrial—not, however, to the court from which it came but to another of the same grade. Few high courts throughout the world enjoy as great prestige, and large numbers of cases come before it every year. In deciding recurrent appeals of similar nature, on similar or identical subjects, it naturally tends to be guided by precedents which it has itself established; and thus, although (as pointed out above) case law has taken no such place in France as in England, the court's decisions not merely serve the interests of justice but aid in developing and preserving unity in the country's jurisprudence.<sup>2</sup>

5. Court of  
Cassation

From even this bare outline of structural arrangements certain general features of the system of ordinary courts are apparent. One of them is the "unity of civil and criminal justice," which

General fea-  
tures of the  
ordinary  
courts

<sup>1</sup> The term "cassation" is derived from *casser*, meaning "to annul."

<sup>2</sup> Certain courts of "experts" standing outside the regular system described have nevertheless considerable importance, chiefly (1) commercial courts in the larger towns, with unpaid judges chosen by the merchants, and wielding jurisdiction (subject to appeal to the courts of appeal) over disputes arising out of commercial transactions, and (2) courts of arbitration (*conseils des prud'hommes*), made up of employers and employees, and charged with settling wage disputes and other controversies springing from labor relationships, with right of appeal to a court of first instance.

means that, although procedures may differ, civil actions and criminal cases are for the most part handled by the same courts, not—as commonly in England and the United States—by separate tribunals; even though to a degree the effect of separation is obtained from division of the higher courts into civil and criminal sections. A second fact is that, though a trace of it appears in the assize courts, in general the English and American system of circuit judges has never been adopted in France, so that courts commonly sit at only one specified place. Thirdly, all French courts, except those of the justices of the peace, are collegial; that is to say, they consist of more than one judge, and—again excepting the justices' courts—no judgment is valid unless concurred in by at least three members of the bench. Except in the highest levels of appellate jurisdiction, England and America regularly trust to the wisdom and integrity of a single judge. The Frenchman, however, regards this as dangerous. With him, *pluralité des juges* has been a fixed rule; *juge unique, juge inique*, a proverb. In later days, to be sure, the plan has come in for a certain amount of criticism. Not only does the country have more courts than it needs,<sup>1</sup> but the plurality principle results in an astonishingly large judicial personnel, entailing heavy expense even though judges are generally poorly paid; besides, a very good argument can be made that, far from ensuring greater care and fairness, the plurality plan lessens the judge's individual sense of responsibility and thereby encourages inefficiency. Proposals in Parliament to change to the single-judge system, even if only in the courts of first instance, have never, however, won much support, partly because of the rootage of the existing plan in tradition, and partly, it must be confessed, because of the unwillingness of deputies and their constituents—not to mention the judges themselves—to see a retrenchment carried out in their several home localities.

How judges  
are selected

Moved by regard for the principles of popular sovereignty and separation of powers, the Revolutionary reformers in 1790 made all judges elective by the people. The plan, however, did not work well, and for the same reasons chiefly that it does not work well in most of our American states today. The people did not know how to assure themselves of experience, skill, and probity in

<sup>1</sup> As indicated elsewhere (pp. 600–601), the number was reduced appreciably in 1926. It is still regarded, however, as rather larger than necessary.

their magistrates, and the judges were drawn into questionable political connections and activities. Appointment by the executive was therefore gradually revived, accompanied by guarantee of tenure during good behavior; and in 1804, at the hand of Napoleon, the last trace of the elective system disappeared. Proposals to go back to the elective plan have, of course, been heard during the last hundred years, and no less a person than the late M. Clemenceau has argued that appointment by the president of the Republic, under the usual cabinet-government plan which puts actual selection in the hands of the Minister of Justice, means political appointments and frustrates proper judicial independence.<sup>1</sup> The Chamber of Deputies, indeed, actually passed a bill for popular election in 1883. Upon reconsideration, however, the deputies rescinded their action; and later proposals, even under the broadened democracy of more recent decades, have stirred only cursory and academic discussion. Neither France nor any other European nation believes it possible to obtain the best judiciary from choice by the people.<sup>2</sup>

In selecting men for judicial posts, the Minister of Justice must observe not only the usual and obvious proprieties, but also the highly important rule that appointees must be persons of special training and experience. Even the justice of the peace, as indicated above, must have a law diploma backed up by some experience of a judicial character and must have passed a special examination—which is certainly more than is required in either Great Britain or the United States. But appointees to higher judicial positions must have more than this. In Britain and the United States, judges of all grades are appointed (or elected) freely from the legal profession. They may have had previous judicial experience, but as a rule they have not done so. At all events, they have not pursued studies and taken examinations aimed at fitting them for judicial work as distinguished from practice at the bar. In France, the judiciary is regarded as be-

Training,  
pay, and  
tenure

<sup>1</sup> The well-known play by Eugene Brieux entitled *La robe rouge* ("The Red Robe") deals with the political factor in judicial appointments and promotions and with the harshness which sometimes attends the French inquisitorial judicial methods.

<sup>2</sup> The closest approach to anything of the kind in France is found in the election of judges of the commercial courts and courts of arbitration mentioned above (see p. 603, note 2). In the Swiss cantons, it should be added, judges of the lowest courts are generally elected by the people.

longing to a profession akin to, yet essentially distinct from, the profession of law, and, as Professor Munro remarks, the young Frenchman, when he begins to study law, must decide whether he wants to be a lawyer or a judge, and must plan his studies accordingly. As a judge, he will have the advantage of prestige, secure tenure, and opportunity to mount by promotion toward the coveted positions at the top. In return, he is expected to prepare himself for the bench as a life career, precisely as he would prepare for engineering or medicine. So prepared, he goes as a young man into some subordinate place with a local court, awaits a chance to become a public prosecutor, perhaps gets an opportunity to sit as a substitute judge, becomes a judge in a court of first instance, and, if all goes well, passes on through black-robed service in a court of appeals, and emerges in middle life or later as a red-robed *conseiller* of the Court of Cassation at Paris. Recruitment is therefore almost entirely at the lower levels, from candidates who have passed searching oral and written examinations; while judges of higher rank reach their posts in nearly all instances by promotion. Judges of the intermediate courts can be removed only by the Court of Cassation, and the members of that court only by the president of the Republic. Contrary to the situation in Great Britain, salaries are low—even lower than in the United States.<sup>1</sup> There are, however, compensations in the form, as has been said, of prestige, a certain amount of leisure, and fair assurance of promotion. By and large, French courts and judges compare favorably in capacity, integrity, independence, and impartiality with those of any other country.<sup>2</sup>

An American watching French courts at work would be astonished, if not also shocked, by a good deal that he would see. In

<sup>1</sup> Even the general president of the Court of Cassation receives only 80,000 francs a year, less than one-fourth of the salary of the Chief Justice of the United States Supreme Court, and only one-tenth of that of the Lord Chief Justice of Great Britain. Other stipends are in proportion.

<sup>2</sup> The judicial system is criticized severely on the ground of lack of initiative and independence in E. Faguet, *The Dread of Responsibility*, trans. by E. J. Putnam (New York, 1914). But the charges are not borne out by the facts. See rejoinder in W. Loubat, "Les idées de M. Émile Faguet sur la justice moderne," *Rev. Polit. et Parl.*, May, 1912, and in comment by J. W. Garner in *Amer. Polit. Sci. Rev.*, May, 1915, p. 400. Cf. J. W. Garner, "The French Judiciary," *Yale Law Jour.*, Mar., 1917; J. Perroud, "The Organization of the Courts and the Judicial Bench in France," *Jour. Compar. Legis. and Internat. Law*, Feb., 1929; P. Crabitès, "The French Civil Bench from Within," *Amer. Bar Assoc. Jour.*, Nov., 1928; and D. C. Woods, "The Efficiency of French Justice," *ibid.*, Mar., 1929.

the handling of civil cases, he would find no jury used, most of the evidence presented in writing, technicalities playing small part, and decisions reached with more speed than he was accustomed to witness at home. More intriguing, however, would be the procedure followed in criminal cases. To begin with, he would learn that, whereas the criminal procedure of his own country and of England, sometimes termed "accusatorial," lays particular emphasis on protecting the accused against a possible miscarriage of justice, that of France, described as "inquisitorial," stresses rather the safeguarding of the rights of society. The two objectives are, of course, not incompatible; nevertheless, the way in which a trial is carried on is to no small extent determined by whether the one or the other is chiefly emphasized. The observer would find, secondly, that there is no grand jury system in France, and that if an indictment is brought against a person, it will be prepared by prosecuting officers attached to a court of appeals and unanimously approved by a *chambre d'accusation*, or section of not fewer than five judges of that court, after preliminary inquiry, with often something approaching "third degree" methods, by an examining officer known as a *juge d'instruction*.<sup>1</sup> He would discover, in the next place, that when the trial starts, in an assize court, the defendant is not put under oath, and that the prosecution does not begin by outlining what it proposes to prove, but instead the president of the court opens proceedings with an *interrogatoire*, himself questioning the accused with a view to bringing out the significant facts, and often engaging in a heated colloquy with that person, while his colleagues on the bench, the prosecutor, counsel for the defense, and witnesses look on with such equanimity as they can muster. He would, indeed, behold the presiding judge taking a vigorous hand at all stages of the trial, examining and cross-examining witnesses, the prosecutor following with such questions as he may want to ask, but with the counsel for defense entitled to ask none except through the intermediary of the presiding judge. Also, he would observe the latter dignitary (after the prosecutor and counsel for defense have had

Some aspects  
of judicial  
procedure

<sup>1</sup> That this inquiry, though thorough, is not the star-chamber ordeal sometimes pictured is indicated by the fact that in a recent year 470 out of 1,025 cases investigated were dismissed by the judges of instruction and 17 more by the *chambre d'accusation*.

opportunity to address the court), not "charging the jury" or summing up the case, but merely submitting to the jurors a list of questions to be answered by "yes" or "no," including always the query of whether, in the event that they find the accused guilty, there have in their opinion been extenuating circumstances. Next, the onlooker would note that after the jurors have retired they frequently call the presiding judge to the jury room in order to ask him what penalty he and his associates will be likely to inflict in case the jury finds this way or that—a proceeding quite out of line with Anglo-American usage, under which jurors are expected to determine guilt or innocence with only a general knowledge of the penalties which different degrees of guilt entail. And finally, it could not fail to be observed—doubtless with disapprobation—that the accused may be required to give evidence against himself, that a witness will not be excused from answering a question on the ground that to do so would incriminate himself, and that witnesses are allowed to go as far as they like in offering as evidence testimony that is palpably the merest hearsay, suspicion, or opinion. It does not follow that justice is harder to get in France than in England or America; and the procedure described has some definite advantages, particularly those of discouraging pettifogging practices of counsel (the lawyers really do not count for much in a French criminal trial), preventing hung juries, and lessening decisions turning on mere technicalities. Any intelligent person can, however, find defects in the system, and, taken as a whole, it could never be made to commend itself to people brought up on Anglo-American traditions.<sup>1</sup>

The courts  
and the con-  
stitutionality  
of laws

In France, as in Great Britain, Parliament is supreme, and any law enacted by it, upon being duly promulgated by the president of the Republic, must be enforced by the courts irrespective of

<sup>1</sup> On the methods and characteristics of French criminal justice, see E. M. Sait, *Government and Politics of France*, 413-426; J. W. Garner, "Criminal Procedure in France," *Yale Law Jour.*, Feb., 1916; A. C. Wright, "French Criminal Procedure," *Law Quar. Rev.*, July, 1928, and Jan., 1929; and, for fuller description, *Amer. Law Review*, 1913, XLVII, 143-152, 300-312, 458-469, 790-795. The monumental work on the subject is A. Esmein, *Histoire de la procédure criminelle en France et spécialement de la procédure inquisitoire depuis le xiii<sup>e</sup> siècle jusqu' à nos jours* (Paris, 1881), of which large portions are translated by J. Simpson under the title of *History of Continental Criminal Procedure with Special Reference to France* (Boston, 1913). The relation of the police to justice is covered in R. B. Fosdick, *European Police Systems* (New York, 1915).

any difference of opinion that may exist concerning its constitutionality. This point was settled as long ago as 1833, when effort was made to induce the Court of Cassation to pronounce unconstitutional, and therefore void, a press law of 1830 palpably violating the constitutional charter of the same year. To the plausible argument that if Parliament could thus ignore the plain provisions of the constitution, it was useless to have a constitution at all, the court replied that however that might be, it was without power to act; and such is commonly presumed to be the situation still. Many prominent French jurists, to be sure, argue not only that the courts really possess the power of judicial review, but that it would be desirable for them to exercise it;<sup>1</sup> some go so far as to predict that the Court of Cassation will be found doing so in the comparatively near future. To any such development, strong objection, however, is raised, especially by the more radical political elements, on the ground that it would violate the principle of separation of powers, frustrate popular control as exercised through the elected legislature, and eventuate in a judicial autocracy. In Continental Europe as a whole, judicial review is manifestly advancing; in Germany, Austria, Czechoslovakia, Switzerland, Norway, Greece, and Rumania, the power is being exercised either by the courts generally or, more often, by some court specially created or designated for the purpose. The matter is, in a sense, somewhat academic in France, since because of the brevity and simplicity of the written constitution, the absence of anything resembling a federal system, and the lack of a bill of rights<sup>2</sup> and of a "due process" clause, Parliament very rarely enacts a law about which there can be any real question constitutionally. If an important case were to arise, however, the Court of Cassation would have to decide whether to stand by its action of a hundred years ago, or, accepting the opinion of scholars like Duguit and Jèze, fall into line with developing practice in neighboring states. One further important circumstance is to be noted, namely, that already, as in Great Britain, all forms of administrative legislation, *i.e.*, orders, decrees, etc., are reviewed to determine whether they were issued in regular manner and in pursuance of powers

<sup>1</sup> See, for example, L. Duguit, *Traité de droit constitutionnel* (2nd ed.), III, 670 ff.

<sup>2</sup> Unless, as some writers contend, the Declaration of Rights of 1789, is to be regarded as part of the country's present constitutional law. See p. 464 above.



properly possessed. The fact that in France this function falls mainly to the Council of State, as the principal administrative court, rather than to the ordinary courts as in Britain, makes no material difference.<sup>1</sup> In both countries, the expanding volume of legislation taking this form entails a steady growth of actual judicial review, even though not as yet extended to statutes.<sup>2</sup>

Administra-  
tive law and  
administra-  
tive courts

When describing, in an earlier chapter,<sup>3</sup> judicial organization and methods in England, we found it necessary to deal only with a series or system of ordinary judicial courts. In France, Germany, Italy, and other Continental countries, however, the tribunals of this nature are paralleled by a system of administrative courts, distinct in form and personnel and applying a different body of law; and in concluding our survey of the French judicial establishment something must be said about these courts and the law that they enforce.

The problem  
of official li-  
ability:

The situation with which we are concerned arises out of the thorny but inescapable problem of legal relationships between a government and its agents on the one hand and the people on the other—the problem that presents itself when, for example, a policeman or other person acting for the government quarantines a citizen's house and keeps him from his business, confiscates the issues of a newspaper alleged to be seditious, or runs down and injures an innocent bystander while in pursuit of an offender, and the citizen claims redress. In England and other English-speaking countries, a time-honored principle has it that the king (nowadays the state) can do no wrong. The purport of this is that the state cannot be sued, unless, and only in so far as, it by statute expressly submits itself to suit. Such right of suit is sometimes conferred—rarely, however, in cases involving simply alleged injury inflicted by public officials upon private individuals or corporations. This does not mean that such persons are obliged meekly to submit to any injury done them,

1. Who can  
be sued?

<sup>1</sup> See p. 613 below. Without presuming directly to annul decrees and orders, the ordinary courts may, however, decline to enforce them, which comes to pretty much the same thing.

<sup>2</sup> For a summary of the status of judicial review in Europe, see J. W. Garner, *Political Science and Government* (1932 ed.), 759–768; on France, the same author's "Judicial Control of Administrative and Legislative Acts in France," *Amer. Polit. Sci. Rev.*, Nov., 1915; and for a full treatment, comparing judicial review in the United States, A. Blondell, *La contrôle juridictionnel de la constitutionnalité des lois* (Paris, 1928).

<sup>3</sup> Chap. XVIII above.

but only that they must look for reparation elsewhere than to the state—in other words, to the officials personally. In England or America, therefore, a person having a grievance or claim of a justiciable nature arising out of the official actions of a health officer, a policeman, or a tax-collector goes into court with a suit against such officer, and, if he wins, collects whatever damages are awarded, not from the state, but from the officer himself—if he can. The proceeding is essentially as it would be if the defendant were another private individual and not a public officer at all. In France, it is otherwise. There, the state freely admits its responsibility for whatever is done by its agents in their public capacity; the plaintiff brings his action, not against the official personally, but against the state; and if he wins, his damages are recoverable from the public treasury, which of course gives him the comforting assurance that they will be paid.

This is one major difference between Anglo-American and Continental methods of handling the problem. But there is a second, namely, as to the courts in which such cases are heard and decided. In England and America, the plaintiff will proceed against the offending official in the ordinary tribunals, precisely as if the suit were against another private party. It is a matter of principle, and a source of pride, that public officers have no immunity from the jurisdiction of the regular courts. In France, on the other hand, a citizen with a case of the sort would carry it, not to a *tribunal d'arrondissement* or other ordinary court described above, but to one of the numerous administrative courts specially provided for such business. Though liable, as anyone else, to be brought into the ordinary courts on matters not connected with their public functions, officers are, in all matters so connected, entirely exempt from the jurisdiction of these courts. It is deemed more compatible with the interests of public administration, while no less just to the citizen, that they—or rather the state which they serve—shall be subject to suit only in courts of a special character associated with the administrative rather than the judicial branch of the government.<sup>1</sup> The system was instituted in 1790 primarily to protect the administrative authorities against the ordinary courts, whose judges, though at the time popularly elected, sometimes manifested lack of sympathy

2. Where suits may be brought

<sup>1</sup> In so far as the administrative courts are under the direction of any executive department at Paris, it is the Ministry of the Interior, not the Ministry of Justice.

with the new reforms. Starting, however, with this intentional slant in favor of the government, the administrative courts long since reached the point where they could be regarded—as they certainly are today—as impartial and effective protectors of the citizen against arbitrary and illegal administrative actions.<sup>1</sup>

Administrative law

Wherever disputes growing out of the relations of public officials with private citizens have to be adjusted—and this means everywhere—there arises a body of rules according to which the liabilities of officials, the rights of citizens, and the procedures for establishing such liabilities and rights are determined—in other words, a system of administrative law. In English-speaking countries, such law is less differentiated from the ordinary law, because both are applied by the same courts, on more or less similar lines. It exists, however; and in France, where separate courts develop and apply it, it forms a vast and wholly distinct body of law. Unlike the ordinary law in that country, it is, indeed, in the main not enacted or codified law, but case law, built up by long lines of court decisions, precisely as the common law of England was developed, and, like most divisions of that law, ascertainable only by study of the decisions themselves. Being of this nature, it is also more flexible than the ordinary law of the statutes and codes.

The administrative courts:

For a little time after the separation of administrative jurisdiction from the ordinary judicial jurisdiction, the settlement of controversies growing out of administration was left to the administrative authorities themselves. In 1799, however, special administrative tribunals—called “councils,” but none the less truly courts—were created for the purpose; and the arrangement survives in its essentials to this day. The tribunals are of two grades—regional (superseding former prefectoral) councils at the bottom, and a Conseil d'État, or Council of State, at the top. Until 1926, there was a prefectoral council in each of the 89 departments, composed of the prefect of the department as ex-officio chairman and two other members appointed (as is the prefect) by the Minister of the Interior from among persons who held, or had held, public administrative positions. The prefect himself was usually too busy with other things to be able to devote much time to the work of the court, but those who heard

1. Regional councils

<sup>1</sup> Cf. pp. 598–599 above.

the cases and made the decisions were generally identified with the administrative services; and the court was, to all intents and purposes, merely an arm or branch of the administration within its particular jurisdiction. The number of cases handled throughout the country in a year frequently mounted as high as 100,000. A very large proportion, however, involved nothing more serious than appeals of thrifty taxpayers against their assessments, while most weightier disputes—including all turning on the validity of a decree or ordinance—were taken at once to the Council of State at Paris. Partly on this account, and partly because the poorly paid members of the councils (apart from the prefects) were commonly of a rather low order of ability, there had long been demand for a reform of the system, and even for abolition of the councils altogether; and as part of a comprehensive administrative and judicial reorganization of 1926 (already mentioned as affecting the courts of first instance) the departmental councils of prefecture were supplanted by a new set of 22 inter-departmental, or regional, councils. Certain functions of a non-judicial character disappeared or were transferred to other agencies; and some further kinds of administrative disputes were removed from the councils' jurisdiction. In general, however, the new councils function on the traditional lines, hearing disputes and settling them by a simple procedure involving little or no expense for the complainant, and usually with appeal to the Council of State.

This Council of State is an able, industrious, powerful, and generally impressive body. Some of its varied functions do not concern us here, but among them are those of giving technical advice to ministers on matters which it is planned to deal with in orders or decrees <sup>1</sup> and of serving as the chief administrative court, just as the Court of Cassation serves as the court of last resort in all ordinary cases, civil and criminal. One branch, or section, composed of 39 *conseillers en service ordinaire*—appointed by the president of the Republic on advice of the council of ministers, and invariably jurists of exceptional attainment—devotes the whole of its time to this latter phase of the council's work, hearing the thousands of appeals that come up every year from the regional councils, hearing also the large number of cases that

2. Council of State

<sup>1</sup> Statutes sometimes require that consultation of this kind take place, though leaving the ministers free to act on or reject the advice received.

come to it as a court of first instance, annulling decrees (even of the president of the Republic) as being *ultra vires*, irregular in form, or flowing from a misuse of power,<sup>1</sup> and generally safeguarding the rights and liberties of the people. Access to the court is easy and inexpensive; all that anyone with a grievance—including dissatisfaction with a judgment rendered by a regional council—has to do in order to get attention is to present a petition stating his case on a stamped form; even the small fee that he pays is returned to him if a decision is given in his favor. As might be surmised, the docket tends to become congested, and complaint of delay is sometimes heard. Relief will probably be found, however, in an increase of the court's facilities (the number of members was increased as recently as 1930), rather than in limiting the kinds of cases that can be brought to it.<sup>2</sup>

ification  
of the system

The theoretical objections that can be raised against this remarkable system of administrative jurisprudence are obvious; some of them have been mentioned above.<sup>3</sup> The administrative branch of the government being made sole judge of its own actions, the way would seem to be open for any amount of government control over the decisions rendered, for virtual irresponsibility of officials, and for encroachment in this direction and that upon popular rights and liberties. The rejoinder that can be, and is, made, not only by French apologists but by informed foreign observers, is simply that, in point of fact, these potential results do not materialize. There is criticism of the regional, as there formerly was of the prefectural, councils; indeed, there are those who seek to cast doubt on the entire present arrangement by suggesting that, after all, the distinction between *contentieux*

<sup>1</sup> The power of annulment does not extend to *actes de gouvernement*, i.e., political, as distinguished from administrative, decrees. The former, however, are not numerous.

<sup>2</sup> With one set of courts functioning for ordinary cases and another for administrative cases, and with the court of last resort in each domain entirely independent of that in the other, it becomes necessary to have some agency for settling disputes as to jurisdiction. The need was met in 1872 by creating a *Tribunal des Conflits*, or Court of Conflicts, which nowadays consists of a functionary known as the keeper of the seals as ex-officio president, three judges of the Court of Cassation, three judges of the Council of State, and twelve other persons chosen by the foregoing seven. As a matter of fact, however, there are usually not more than half a dozen disputes a year to be decided. See J. Theis, "Le Tribunal des Conflits," *Rev. du Droit Public et de la Sci. Polit.*, July-Sept., 1932.

<sup>3</sup> See pp. 369-370 above.

*administratif* and *contentieux civil* is a subtlety and that no harm would come from sending administrative cases to the ordinary courts on the Anglo-American plan.<sup>1</sup> Perhaps, however, the worst that can be said is, as an eminent French political scientist has remarked, that the system, though unjustifiable in principle, has been "a valuable instrument of legal progress."<sup>2</sup> Certainly it protects public officials against vexatious and absurd obstacles such as are often interposed by English and American courts on mere technicalities, and, by substituting state for personal liability, gives them greater assurance and independence in making decisions and enforcing law. Certainly, too, it in no wise jeopardizes popular rights and liberties. As long ago as 1914, one of the most eminent of French jurists affirmed that the great body of case law worked out by the Council of State affords the individual "almost perfect protection against arbitrary administrative action";<sup>3</sup> and more recently a competent American authority has asserted "without fear of contradiction" that in no other country of the world are the rights of private individuals so well protected against administrative abuses and the people so sure of receiving reparation for injuries sustained from such abuses.<sup>4</sup> This happy state of affairs is the more significant considering that France is a country of highly centralized administration, with multitudes of national officers and functionaries who, in the absence of some positive and effective restraint, would inevitably tend to invade and override the liberties of the private citizen. Whatever might be anticipated to the contrary, this needed restraint is supplied by the system of administrative law and administrative courts, more particularly the Council of State, to which all Frenchmen look with high approval as their Argus-eyed defender against official arbitrariness and oppression. Critics in England and America have in later years grown more sympathetic toward the French system, as they have come to understand it better; and in both countries some tendencies can be observed not only toward fuller appreciation of the administrative law which they have themselves developed, but even

<sup>1</sup> A Senate committee went on record to this effect in 1921.

<sup>2</sup> J. Barthélemy, *The Government of France*, 178.

<sup>3</sup> L. Duguit, "The French Administrative Courts," *Polit. Sci. Quar.*, Sept., 1914, p. 393.

<sup>4</sup> J. W. Garner, "French Administrative Law," *Yale Law Jour.*, Apr., 1924, p. 599.

toward the use, in certain expanding fields, of agencies having all the essential characteristics of administrative courts.<sup>1</sup>

<sup>1</sup> Good brief discussions of French administrative law and courts will be found in W. B. Munro, *The Governments of Europe* (2nd ed.), Chap. xxviii; E. M. Sait, *The Government and Politics of France*, Chap. xi; and F. J. Port, *Administrative Law*, Chap. vii. Leading French works on the subject include H. Berthélemy, *Traité élémentaire de droit administratif* (12th ed., Paris, 1935), and M. Hauriou, *Précis de droit administratif et de droit public* (11th ed., Paris, 1927). Among informing articles are those by J. W. Garner cited above, and also his "Anglo-American and Continental European Administrative Law," *New York University Law Quarterly Rev.*, Dec., 1929; L. Duguit, "The French Administrative Courts," *Polit. Sci. Quar.*, Sept., 1914; and H. Berthélemy, "The Conseil d'État in France," *Jour. Compar. Legis. and Internat. Law*, Feb., 1930. L. Duguit, *Law in the Modern State*, trans. by F. and H. Laski (New York, 1919), is also a work of prime importance.

## CHAPTER XXIX

### LOCAL GOVERNMENT AND ADMINISTRATION

In tracing the development of French law and justice, we were viewing the antecedents of the legal and judicial systems of a considerable part of the civilized world. So, too, with the rise of the Republic's remarkable scheme of local government and administration. Outside of English-speaking countries at all events, English political institutions have been influential chiefly upon the structure and processes of *national* government, in respect to such matters as parliaments, cabinets, budgets, parties. Influence of similar magnitude in the domain of local government, and upon the relations of national government with local, have rather been mainly French. In the days of Napoleon—prime originator of local government forms as well as of law codes and courts—the régime of prefects and subprefects was imposed upon Belgium, western Germany, Switzerland, Italy, Spain, and Portugal, where in most of its essentials it still survives. In later times, it found its way into the Netherlands, Poland, Czechoslovakia, Yugoslavia, and Greece, and with various modifications into the Near East, Japan, Siam, and Latin America. Wherever the outstanding characteristic of local government is a high degree of coördination and control from the national center, one is justified in suspecting that French influence has been at work.

Significance  
for the world

One thing that the student of political science soon notices is that governments are more stable at the bottom than at the top. England in the seventeenth century executed her king, abolished monarchy, suppressed the House of Lords, proclaimed a republic, and swung back again to monarchy and a second chamber with practically no disturbance of the functionings of county, borough, and parish. America passed from colonial status to independence, and from Articles of Confederation to the Constitution of 1789, without perceptible effect upon town meetings and county courts. Germany was convulsed by revolution in 1918, Italy succumbed to a Fascist dictatorship in 1922, Spain became a republic in 1931, with hardly a significant change in the manner

of local in-  
stitutions



of governing the people locally. To be sure, local government is never completely static; industrialization, urbanization, and other social developments have in recent decades led to extensive readjustments in Great Britain, the United States, and elsewhere. Speaking broadly, however, national governments are played upon by larger, more unsettling forces than local, with proportionately greater likelihood of being toppled to the ground. Even the history of France illustrates the point; because, notwithstanding that the Revolution of 1789 swept away most of the inherited institutions of local government along with those of national government, the system that took their place, once worked out by the revolutionary assemblies and Napoleon, survived the long series of *coups d'état* and revolutions of the nineteenth century with only such minor alterations—chiefly in the direction of somewhat increased democracy—as a period of this length must inevitably produce. French local government of today was born amidst revolution, but for a hundred and twenty-five years it has withstood every shock of national constitutional change.

Local government before the Revolution of 1789

The political history of France in the Middle Ages and earlier modern times was largely a story of the gradual breaking down of feudalism, accompanied by the absorption of the great fiefs into the royal domain—in other words, the supplanting of nominal by actual royal power throughout the length and breadth of the country. Monarchy became absolute and remained so until 1789, and administration took on the highly centralized character which, with brief interruption during the great Revolution, it has retained to this day. At one time, the principal area of regional government was the province, and as late as 1789 there were provinces with elective assemblies which levied taxes and had some control over expenditures. In the sixteenth century, however, the province was replaced for both administrative and judicial purposes by a somewhat smaller unit known as the *généralité*; and thereafter the older area lost most of its vigor and importance. Of *généralités*, there were, in 1789, 36, each in charge of a royal official known as the intendant, who, with his assistants, managed in the king's name all matters of administration, justice, police, and finance. Within the *généralités* were varying numbers of smaller governmental areas known as communes, some 40,000 in all, ranging from villages with a few dozen inhabi-

tants to the largest towns and cities. In earlier centuries, most of these had been free to elect their own officers and otherwise manage their purely local affairs. By 1789, however, such rights had commonly been lost, and, though uniformity of arrangements was totally lacking, self-government had everywhere become a fiction. If the taxpayers continued to meet in primary assembly as of old, it was as a rule only to be told by the intendant what they should do.<sup>1</sup>

The National Assembly of 1789 turned its attention to this situation promptly and in no faltering spirit. First of all, it drew a new local government map. After some weighing of the issue, the communes, as being historic and natural local units, were allowed to stand, with merely a certain amount of rearrangement. But the provinces and *généralités* were swept away and the country freshly divided into 83 approximately equal areas known as departments, each cut into *arrondissements*, or districts (534 in all), which in turn were subdivided into a total of 6,840 cantons. The ascending scale of local government units thus became, as it is today, commune, canton, *arrondissement*, department—all arranged in perfect symmetry and, in the case of all except the communes, with deliberate intent to preserve no connection with the past. The new set of counties created in Great Britain in 1888 largely followed the lines of the old historic counties.<sup>2</sup> But the French departments and their principal subdivisions broke completely with history and tradition; even the names given them were drawn from rivers, mountains, or other politically colorless derivations. From this, furthermore, the early revolutionary assemblies went on to install wholly novel arrangements for the management of local affairs. First, they transferred practically all powers from agents of the central government to the local units themselves, carrying the country almost overnight from an extremely centralized to an equally decentralized system. Then they gave vent to their ardently democratic impulses by ordaining for departments, *arrondissements*, and communes alike governing councils and other authorities elected by manhood suffrage. Never, unless in Soviet Russia (and there on quite different lines), was an entrenched system of local government

The Revolutionary experiment

<sup>1</sup> For a fuller account of local government in France before the Revolution, see *Cambridge Modern History*, VIII, 37-46.

<sup>2</sup> See p. 390 above.

so quickly and completely uprooted in favor of one of different aspect.<sup>1</sup>

The Napoleonic reaction

Events soon showed that the reformers had travelled too fast. Habituated to paternalism and centralization, the people proved unequal to the responsibilities so swiftly thrust upon them. Abuses of many kinds arose—irregularities in the election of local councils, ill-advised and unjust taxation, extravagance and corruption in official circles, inefficiency in police and other administration. Even without the impetus supplied by foreign wars, obviously requiring unity and strong government throughout the country, there would have been a reaction. Upon the reestablishment of some semblance of national order after the fall of Robespierre in 1794, guidance from Paris was effectively revived through the agency of "revolutionary committees" set up to supervise the locally elected councils and officials, and in 1795 still closer correlation was achieved, with the National Directory at the capital enjoying rather substantial control. Then came Napoleon. From his point of view, orderly administration was considerably more important than local autonomy; and from first to last his policy looked to the revival of something like the old Bourbon centralization of government, even though on more enlightened lines and with incomparably better results. The new sets of local government areas devised by the revolutionary leaders were allowed to stand, the canton becoming a judicial district. But the elective principle was wholly withdrawn, precisely as it was in the case of the judiciary. There were still to be departmental, *arrondissement*, and communal councils, but thenceforth composed exclusively of members designated by the central government, acting directly or through its local representatives; and mayors of communes, subprefects of *arrondissements*, and prefects of departments, with all their assistants, were to be named in the same way. The office of prefect, now (1800) appearing for the first time, was destined to be one of first-rate importance. The name is Roman, and its use emphasizes the significant parallel which existed between the Napoleonic and Roman administrative systems. Supported by centrally appointed police commissioners, the prefects became

<sup>1</sup> For lists of the original departments and *arrondissements*, and of these divisions as modified in later days, see R. Le Conte, "Les divisions territoriales de la France avant et depuis 1789," *Rev. du Droit Public et de la Sci. Polit.*, July-Sept., 1926.

the great intermediaries through which the will of Paris was imposed on the departments, and, in turn, on the smaller areas, whose councils and officials found prefectoral orders and instructions limiting their freedom of action at every turn. Of decentralization and democracy in local government, Napoleon left hardly a trace.

As was remarked above, the tenacity of local institutions finds one of its best illustrations in the persistence of the Napoleonic system, under kingship, empire, and republic alike, to our own day. There have, of course, been changes, including some of considerable significance as recently as 1926.<sup>1</sup> Nevertheless, if the Corsican were to walk the earth again he would find no difficulty in recognizing his handiwork. One will not be surprised to learn that the principal modifications date from two periods of liberalism in the country's political history—the Orleanist monarchy and Second Republic, and the Third Republic. In the first of these, the councils of the departments, *arrondissements*, and communes again became elective, as a natural consequence of the revolution of 1830, reinforced by interest in popular government stirred by De Tocqueville's studies of American democracy.<sup>2</sup> The suffrage, too, though at first limited, was placed on a manhood basis under the Second Republic. Under the Second Empire (1852–70), such slight steps as had been taken in the direction of decentralization were retraced, and popular election, though maintained in form, became a farce. With the country once more a republic after 1870, and moving steadily toward firmer and riper democracy in its national government, the way was again open for change. There was, however, no disposition to sweep away the great imperial legacy. Like the law codes and the pyramided courts, ordinary and administrative, it had woven itself into the frame and texture of the national life. In response to growing demand for larger freedom for the communes (after all, the only local government areas having genuine unity and traditions), a law of 1882 gave their councils the right to elect the mayors and *adjoints* (assistants); and two years afterwards a monumental *Loi sur l'Organisation Municipale* became the code upon which, with various modifications, the government of

Develop-  
ments since  
Napoleon

<sup>1</sup> See p. 629 below.

<sup>2</sup> De Tocqueville's *Democracy in America*, based on observations made in the United States in 1831, was published at Paris in 1835.

villages, towns, and cities is conducted to this day. Other measures from time to time—most recently in 1926—cautiously increased the powers of both departments and communes and also the discretion of local representatives of the central government, chiefly the prefects and subprefects. But the elective principle has been carried no farther since 1882; and the country still presents the spectacle of a nation profoundly democratic in its spirit and in its arrangements for national government, but with less local autonomy than any other state of Western Europe except Fascist Italy and “Nazi” Germany. Certainly as compared with the English, the French are still, locally, a governed, rather than a self-governing, people.

Aspects of  
the system  
today:

1. Integra-  
tion

Along with this general fact go two or three other major characteristics. The first is the high degree of integration of French government considered as a whole. Local government is never a thing entirely apart; national government—or state government in such countries as Canada, Switzerland, and the United States—impinges upon and more or less envelops it. We have seen that in Great Britain the connection, after having been considerably relaxed in the eighteenth and earlier nineteenth centuries, is steadily growing closer. In the case of France, it is almost misleading to speak of *local* government at all. Not only are there no independent spheres of governmental authority; there is really only *one* government, functioning equally through ministers and Parliament at Paris and prefects and councils throughout the country at large. Local areas have only such governing organs, local bodies only such powers, as are given them by national law. All of the threads are gathered ultimately in the hands of the central government at Paris. More than this, the entire mechanism of departments, *arrondissements*, and communes heads up in a single ministry at the capital, that of the Interior—markedly in contrast with the situation in Great Britain, where, as we have seen, not only is central control by no means so extensive, but that which exists is exercised, as to various matters, by upwards of a dozen different establishments in Whitehall.<sup>1</sup>

2. Uniform-  
ity

A second main characteristic requires only to be mentioned, namely, the rigid uniformity of local government arrangements over the entire country. Wherever one goes—to Normandy or

<sup>1</sup> See p. 403 above.

Brittany, to Auvergne or Languedoc—one finds the same elective councils, the same prefects and mayors, the same school systems and police, the same laws and taxes. Some departments are agricultural and some industrial, some populous and others less so, some maritime and others inland; it does not matter—all have governments exactly alike. Still more remarkable, some 38,000 communes of every conceivable variety as to population, economic interest, and social structure have governments of a pattern, with larger councils and more numerous *adjoints* and other officials in case of the more populous ones, but with otherwise no noticeable distinction. To be sure, France is better adapted to this sort of thing than some other countries: it is predominantly agricultural; the population grows slowly and is exceptionally homogeneous racially and linguistically; and there is always the flair for symmetry and the tradition of standardization imposed from Paris. But the dead level to which all forms of local government are reduced, and the total absence of experimentation with novelties like commission and manager plans, amazes the observer, particularly if from our own country. "Much is said in the United States," remarks an American writer, "about the impossibility of providing, in a general charter law, for the satisfactory administration of all classes of cities. How then would the legislators of an American state regard a proposal to establish a uniform framework of administration applicable not only to all cities of whatsoever size, but to towns and villages as well? This is, nevertheless, what the French municipal code has done, and with no very evil results."<sup>1</sup>

Departments, *arrondissements*, and other local areas manifestly serve two purposes. On the one hand, they are units for the enforcement of laws, the administration of justice, and the collection of taxes by the national government. In this rôle, they are like judicial districts or internal revenue districts in our own country. On the other hand, they are areas with governments of their own—with locally elected councils, officers to enforce council ordinances, separate budgets, separate police establishments, schools, health services, and what not. True enough, these governments have only limited authority, and officials such as the prefects who share in carrying them on are on the scene partly, if not primarily, as agents commissioned and instructed from

3. Dual function of local areas and officials

<sup>1</sup> W. B. Munro, *The Government of European Cities*, 14-15.

Paris. There is work to be done, however, with which Paris concerns itself only now and then or not at all; and while the outstanding fact is the blanketing of the country with laws, regulations, decisions, instructions, and supervision from the banks of the Seine, it is not to be overlooked that a prefect, for example, is at the same time spokesman and agent of the Ministry of the Interior and head of a government which is no less a going concern than that of an English county or an American city.

Areas of local  
government

Of the four sets of local divisions which one finds in France—departments, *arrondissements*, cantons, and communes—only the first and last have genuine political character and individuality. The *arrondissement* is an area of routine administration, and incidentally serves as a unit for representation in the Chamber of Deputies.<sup>1</sup> Its once important judicial functions were, however, taken away in 1926; while the canton exists only for judicial and electoral purposes. Departments and communes are something more than mere administrative conveniences of the national government. To be sure, they have no inherent rights and powers, no attributes and privileges which that government cannot take away; they can be enlarged or diminished by its fiat, or blotted out altogether. Nevertheless, they have “corporate personality”; they can sue and be sued, own property, and make contracts. And they are areas in which laws are made, taxes levied, policies adopted—in short, areas in which government, in a broad sense of the term, is carried on.

The de-  
partment

Of departments, there have been from their beginning in 1790 between 80 and 90, the number having been brought to the present figure, 89, in 1919 by the addition of three which were organized from the territory recovered from Germany.<sup>2</sup> In size, they vary from the department of the Seine, with 185 square miles, to that of Gironde, with 4,140, and in population from Hautes-Alpes with 87,566 people to the Seine (consisting chiefly of Paris) with 4,933,855. Aside from the department of the Seine, which on account of containing the national capital has been given a form of organization peculiar to itself, all have governments of a single pattern.

At the head of each department is a prefect, nominated by the

<sup>1</sup> See p. 538 above.

<sup>2</sup> There are also three in Algeria which since 1881 have been assimilated, as far as conditions permit, to the status of those in France proper.

Minister of the Interior and appointed by presidential decree; and in the person of this busy and powerful official the shadow of Napoleon still walks in every corner of the land. Appointed for no fixed term, usually from among persons who have had experience as subprefects or in similar capacities, a prefect may advance from one to another of the three established grades, moving from this department to that, with generous increases of salary; or, falling out of favor with the authorities at Paris, he may be demoted, placed on an "unattached" list (which leaves him with no prefectural duties to perform, but with the consolation of continuing to draw a salary), or removed altogether. There are few outright dismissals. But, the prime requirement of a prefect being that he shall serve the authorities at Paris loyally, tactfully, and effectively, a minister of the interior will rarely hesitate to dispense with any of the number who show too little spirit in carrying out the government's will.

The prefect

A prefect must indeed be a man of parts; one will search far for a public official on a similar level of whom more is expected. To him above all others it falls to play the dual rôle of local agent of a vigorous central government and executive head of a government of a local area. In the former capacity, he appoints long lists of tax-collectors, school-teachers, postmasters and postal clerks, sanitary officers, and the like; supervises a bewildering variety of public services, such as education, health, poor relief, main highways, police, social insurance, and census-taking; transmits voluminous reports to the half-dozen or more ministries at Paris concerned with these services; publishes and enforces the never-ending regulations (statutes, decrees, etc.) pouring forth from the capital; approves the budgets of the larger communes and keeps a watchful eye on communal affairs generally; and issues many regulatory edicts (known as *arrêtés*) on his own account. Within his jurisdiction, he is at the same time eye, ear, and mouthpiece of the central government. Formerly, nearly all of his work was done under detailed instructions from the capital. Of late, he has been allowed a good deal more discretion; and significant decentralizing decrees of 1926 listed numerous matters on which regulations were thenceforth to be made, not by decree from Paris, but by prefectural *arrêtés*. Even yet, however, he must conform to great numbers of nation-wide regulations, as well as to instructions issued in particular situa-

His dual rôle



tions. In selecting civil servants, for example, he must comply with whatever rules the government at Paris sees fit to impose. But the prefect is also the executive head of a partly autonomous divisional government, precisely as is the governor of an American state or the mayor of a city. In this capacity, it falls to him to appoint all employees of the department, to prepare all business for consideration by the council, to carry out the council's ordinances, to hear and adjust complaints, to supervise elections, and generally to represent the department and its people in their relations with neighboring departments and with the authorities at Paris.

Difficulties  
and embar-  
rassments

The prefect is often referred to as the pivot of French administration. It is the nature of a pivot to be subjected to strain from all directions, and such is the prefect's lot. The office took form in a period when Napoleon's word was law and all that was required was to enforce it. But when it was carried over into a republican régime, a different situation arose. From an Anglo-Saxon point of view, it should have disappeared altogether; no English-speaking country has anything like it. But such was not the drift of events, and the prefect, essentially a little Napoleon in his department, finds himself functioning under a cross-fire of democratic motivations and policies from which result plenty of embarrassment and difficulty. To him it falls as of yore not only to dispense local offices and control local legislation, but to enforce unpopular regulations and administer burdensome taxes. In doing so, he can hardly fail to displease local groups and interests. In the old days, he need not worry overmuch; he had Napoleon—or some other autocrat—to back him up. In these times, however, he is not unlikely to find the department's senators and deputies, ever with their ears to the ground in their constituencies, dogging the steps of the Minister of the Interior at Paris in an effort to get him transferred or removed. Perhaps they will succeed. Yet no hope lies in catering to opinions and interests in the department, for this would mean a charge of disloyalty to the central government, which would be equally fatal. "Today," writes an eminent French authority, "placed between universal suffrage, which really rules, and the central power, which wishes to govern, he [the prefect] is between the anvil and the hammer. Since he is concerned in everything, he concentrates in his own person the perpetual conflict of authority

and freedom. . . . He is at once the agent of the government, the tool of the party, and the representative of the area which he administers. Yet he must remain impartial, foresee difficulties and disputes, and remove or mitigate them; conduct affairs easily and quickly, avoid giving offense, show the greatest discretion, prudence, and reserve, and yet be always cheerful, open, and a good fellow."<sup>1</sup> Small wonder that a prefect spends most of his days walking a tight-rope of expediency! Small wonder, too, that he has to be not only an administrator but a politician! The ministers whom he serves are politicians, and by long tradition he is looked to by them to use his patronage and influence in their behalf and in support of those who stand behind them in the Chamber. The deliberate employment of office-holders to promote partisan ends is in no wise peculiar to France; there is plenty of it in the United States, particularly in connection with Republican tactics in the South. But the French prefect as a wire-pulling civil servant is hardly surpassed in any other country west of the Balkans.

Visiting the chief town of a department, one will hardly fail to observe a well-kept building before which the tri-color is flying, and bearing in large letters the word "Prefecture." Here will be found not only the official residence of the prefect, but the meeting-place of the general council and the offices of a *chef de cabinet* and varying numbers of chiefs in charge of administrative bureaus or divisions. Higher officials in the departmental administration are appointed by the Minister of the Interior, inferior ones by the prefect himself, under no scheme of competitive examination, yet with safeguards supplied by legal qualifications which few mere place-seekers can meet. Until 1926, a conspicuous feature of the department machinery was a *conseil de préfecture*, or prefectural council, consisting of three persons who audited accounts, advised the prefect, and, with that dignity as a legal though usually non-participating member, served as the administrative court of the department. As has been recorded elsewhere, these departmental prefectural councils were, however, replaced in the year mentioned by a smaller number of interdepartmental, or regional, councils which now constitute the administrative courts of first instance.<sup>2</sup>

The prefectural staff

<sup>1</sup> G. Hanotaux, *L'Énergie française* (Paris, 1902), 81.

<sup>2</sup> See p. 613 above.

The departments are therefore no longer areas of administrative justice, and the non-judicial functions of the old councils have been redistributed. Various kinds of *arrêtés*, for example, which formerly could be issued only by the prefect and council now emanate from the prefect alone, with or without approval from the appropriate minister at Paris.

The general  
council

Completing the mechanism of department government is the *conseil générale*, or general council, consisting of unpaid members elected by manhood suffrage for terms of six years, one-half retiring triennially. Each canton is entitled to one councillor, and since the number of cantons in the departments is far from uniform, councils vary from 17 to as high as 67 members.<sup>1</sup> Two regular meetings are held each year—a spring meeting usually lasting less than two weeks and a summer meeting, for consideration of the budget and apportionment of direct taxes among the *arrondissements*, sometimes lasting longer. Special meetings may be called by the prefect; and between sessions a committee of from four to seven members meets at least once a month and carries on business in the council's name. As is true also of communal councillors, members are not salaried, but usually vote themselves allowances sufficient to cover their expenses.

From what has been said about the prefectural organization in the department, it will readily be deduced that the general council has no such power or importance as belongs to a county council in England. It is, to be sure, in a sense a departmental legislature; in fact, the net effect of the decrees of 1926 was to give it somewhat more of this character than ever before. It examines the accounts of the prefect, adopts the annual budget, apportions taxes among the *arrondissements*, provides for the maintenance of public buildings and highways, and adopts ordinances of various kinds. All this it does, however, under decided limitations. So comprehensive are the regulations laid down at Paris and by the prefect that comparatively little room for action remains; not much can be taken up except on the prefect's initiative; and nearly everything that is done is subject to disallowance by the central government, which can also dissolve a council at any time. The decrees of 1926 narrowed the grounds on which acts of the councils may be disallowed (in gen-

<sup>1</sup> For special arrangements in the department of the Seine, see p. 634 below.

eral, tending to limit them to illegality, as distinguished from mere inexpediency), and in other ways appreciably relaxed central control. A French writer has, indeed, affirmed that the councils are at last beginning to take on the nature, as well as the appearance, of local parliaments.<sup>1</sup> As long, however, as their position remains fundamentally as described above, they cannot be looked upon as legislative bodies of genuine independence and virility.

Departments are divided into *arrondissements* or districts, and these in turn into cantons. Neither unit, however, is in any sense an area of self-government; neither has corporate personality, owns property, or has a budget. Of *arrondissements*, there were for some years after the war in the neighborhood of 385. In 1926, a total of 109, in 79 departments, were divided among others, while three new ones were created, reducing the total to the present 279. In each there is a subprefect, appointed from Paris, as a chief administrator, and a council elected by manhood suffrage from the cantons for terms of six years. The council, however, has practically nothing to do—except to form a segment of the electoral college which chooses the department's senators. And the subprefects, although endowed in 1926 with certain powers transferred from the prefects, are still almost as useless as in days when the Chamber of Deputies repeatedly voted to suppress them altogether. Reduction of their number by 106 at the date mentioned represented a compromise, urged by the Senate, under which *arrondissements* which displayed administrative vigor were allowed to continue, with their subprefects, while only those that could show least reason for existence were cut off.<sup>2</sup> Many reformers would have been glad to see the *arrondissement* disappear entirely, save perhaps as the basic area for electing deputies; and even this use would terminate if election by *scrutin de liste* were to be revived.

*Arrondissements and cantons*

The canton is the area from which members of *arrondissement* and department councils are elected, and in which (singly or in

<sup>1</sup> R. Bonnard, in *Rev. du Droit Public et de la Sci. Polit.*, Apr.–June, 1927, p. 278.

<sup>2</sup> The main test applied was that of whether the lesser communes in a given *arrondissement* needed the advice and aid of the subprefect or had easy access to the department capital and could draw upon prefectural assistance directly. About the only plausible ground on which to continue any of the subprefectures is the service which they render to the communes.

combination) justices of the peace carry on their work. It has no council, and no administrative authorities. Nor has it need of such. The number is not far from 3,000.

The commune: general features

The commune is a different affair. To begin with, it alone among French local government units is rooted in the country's remoter past. By law of 1789, all local areas having separate identity (some 44,000 in number) were recognized as communes; and though in later days some have been absorbed by others and new ones have been created, a large proportion have a history that stretches back through several centuries. Furthermore, the commune not only is, like the department, a legal person, capable of suing and being sued, making contracts, and acquiring property, but it has more control over its own affairs, petty though they often are, than has any other area. Every square foot of France is included in some one of the 38,004 communes officially recognized at the last census.<sup>1</sup> Some are of considerable extent; some consist of but a few acres. Some are large cities, e.g., Marseilles, Lyons, Bordeaux, indeed Paris itself; many are less populous pieces of territory, with only small towns or even none at all; hundreds, indeed, are hamlets with fewer than 50 people.<sup>2</sup> The extraordinary thing is that, with the exception of Paris and Lyons, all—whether urban or rural—have precisely the same form of government, in accordance with the *Loi sur l'Organisation Municipale*, or municipal code, of 1884 mentioned above. Whether the population be a hundred or a hundred thousand, there is the same elected council, the same mayor and assistants, essentially the same staff of "permanent" administrators. To be sure, the size of the council and the number of administrative officials vary with the number of inhabitants, and a certain amount of additional machinery is provided for a few of the larger municipalities. But to all intents and purposes, communal government is of the same pattern wherever found, and an observer who has familiarized himself with it in one place has learned it for all. The same is true of English borough government. English boroughs, however, have at least the common physical basis of a strictly urban population. Even among cities, there is in the

<sup>1</sup> The number is smaller than a hundred years ago but of late has tended to increase. In 1911, it was 36,241. The number of corresponding units in Germany in 1925 was 63,556. See p. 799 below.

<sup>2</sup> Some 22,000 have fewer than 500 inhabitants.

United States, as also in Germany, no approach to a standardized form of government and administration.

Every commune has a council of from 10 to 36 members,<sup>1</sup> according to population—elected on a general ticket if the number of inhabitants is under 10,000, otherwise usually by wards returning at least four members apiece. In any event, all are chosen at the same time, for a term of formerly four, but since 1929 six years, and under suffrage arrangements identical with those applying in all other French elections.<sup>2</sup> There are independent candidacies, but in general the elections run on party lines, with the Socialists forcing the issue in the larger cities very much as of late Labor has done in Great Britain.<sup>3</sup> English and American municipal councils commonly meet frequently, sometimes weekly, but even in the largest municipalities French councils hold only four regular sessions a year. Each meeting is likely to last, however, several days, and that of May, devoted primarily to the budget, has a maximum legal limit of six weeks. Committees are used, and special sessions, convoked by the prefect, subprefect, or mayor, sometimes become necessary.

In Great Britain, as we have seen, the council is in a very true sense the government of the municipality, subject only to a moderate amount of restriction by national law and from the national administrative authorities. The American municipal council (except in commission-governed cities) is relatively weak, because of the separation of powers. The French council stands between the two, but nearer the American, not because of separation of powers, but mainly on account of the large amount of control from Paris wielded through the prefect and other local agents of the central administration. To be sure, the municipal code is generous in its grant of authority. The council, it says, "regulates by its deliberations the affairs of the commune." To be sure, too, there are a good many matters of purely

<sup>1</sup> Except that in Paris there are 80 and in Lyons 54. The regular scale calls for 10 members in communes of under 500 people and 36 in those of over 60,000.

<sup>2</sup> There is especially strong demand for woman suffrage in communal elections, and it will no doubt be introduced whenever women are enfranchised at all. In the Paris elections of 1925, 10 Communist women were chosen to the council. The courts, however, refused them admission on the ground that female candidacies are illegal.

<sup>3</sup> For a diverting account of a council election in the capital, see R. C. Brooks, "Paris Gayly Chooses a Council," *Nat. Munic. Rev.*, Sept., 1925. Cf. article by J. K. Gooch, *ibid.*, June, 1930.

local concern, *e.g.*, streets, parks, water supply, and fire protection, which the council—more properly, the council and mayor—may manage quite independently. But in such important domains as finance, police, and education, the initiative lies largely or wholly elsewhere; on many matters, *e.g.*, the purchase or sale of property, no decision can be made effective until assented to by the prefect or subprefect, the department council, or some other higher authority; many ordinances are subject to suspension or annulment by the prefect or subprefect; every communal budget must be approved by the prefect or subprefect (depending on its amount); and in extreme cases the council itself may be dissolved by presidential decree. Under ordinary circumstances, a prudent council will carry along its allotted share of the work of the commune with little interference from above; not infrequently, its opinion will be sought by the central authorities before they decide on a policy affecting the interests of those whom it represents. But the councillors can never afford to forget that they are only a cog in a vast tightly-gearred mechanism of government and administration operated, not from the *mairie*, but from pulsating office-buildings on the banks of the Seine.

The mayor  
and assist-  
ants

A newly-elected council designates from among its members one, usually more experienced than the rest, to serve as mayor, and from one to 12 others (according to the commune's population<sup>1</sup>) to act as *adjoints*, or mayor's assistants, during the ensuing six years. This does not have the effect of removing the persons selected from the council; for although there is more separation of powers than in England, the principle is not carried so far as to prevent the mayor, *adjoints*, and ordinary councillors from sitting together and transacting business as one body, with the mayor presiding. Neither mayor nor assistants receive salaries. The former may, however, each year be voted an allowance for expenses, and in larger communes, where, notwithstanding a great deal of aid from a full-time *secrétaire de mairie*, or city clerk, most of his time must be devoted to public duties, he may through this guise be given a substantial stipend. Like the prefect, the mayor occupies a dual position. Though no longer appointed by the central government, he acts as its agent in the commune, promulgating decrees passed along to him by the

<sup>1</sup> By exception, Lyons has 17.

prefect and subprefect, issuing *arrêts* or orders, and supervising census-taking, preparation of the electoral lists, enforcement of military service, and other activities with which the national government is directly concerned; and for remissness in these duties he may be suspended by the prefect or Minister of the Interior, and even removed by the president of the Republic. On the other hand, he acts as executive head of the commune, appointing administrative officials, carrying out local ordinances, preparing the budget for inspection by the prefect or subprefect and adoption by the council, supervising the awarding of contracts, and generally promoting communal interests. Endowed with few of the independent powers which an American mayor possesses, he nevertheless is no such figure-head as the mayor of an English borough. In many instances, he is elected to the office as long as he cares for it, and frequently he adds to his official dignity the prestige and influence that come from being the local leader of his party.

Like the mayor, the assistants are not professional administrators. To be sure, the administrative work of the commune is parcelled out among departments equal in number to the assistants, and one of the latter is placed in nominal charge of each (public works, sanitation, fire protection, and so on), the mayor himself regularly retaining direct responsibility for the department of police—a branch of administrative jurisdiction which, under French usage, includes not only the maintenance of law and order but the enforcement of public health regulations, the supervision of industrial establishments, and many similar activities. But the assistants merely supervise, on a part-time basis, and the actual day-to-day work is done by full-time, permanent, paid officials and employees appointed by the mayor<sup>1</sup> under whatever civil service regulations may happen to exist in the particular commune. Attempts since 1919 to improve the methods of recruitment and advancement of personnel by legislative enactment of the central government, and efforts on the part of the Ministry of the Interior to foster professional training, have not been notably effective, and in the rural communes the service is still at the mercy of politics and caprice. In the urban communes, especially the more populous ones, the situation is

The permanent civil service

<sup>1</sup> Except in the case of the commissioner of police, who is appointed by the central government.



better. Here, although politics sometimes plays a part, positions rarely go to persons entirely devoid of technical proficiency; and in several of the most important municipalities, such as Bordeaux, one finds a personnel system as well planned and honestly administered as any in the world.<sup>1</sup>

The govern-  
ment of Paris

Most great national capitals are governed under some more or less special régime, and Paris is no exception. The municipal law of 1884 does not apply, and the city, while technically a commune, has different officers and different powers from any other French municipality. The reasons for excepting it from a system otherwise nation-wide are not difficult to discover. In the first place, it is many times as populous as any other city in the Republic. In the second place, its people are, at least by tradition, exceptionally volatile in political matters. Throughout modern times, and especially since 1789, it has been a fount of unsettling influences, the point at which revolutions, in long succession, have had their beginning. Protection of the nation against destructive forces and influences seems to require that the central government shall have special means of control over the capital's affairs. Furthermore, the city is filled with buildings, monuments, and other national properties, the security of which is a matter of concern to the people of the entire country.

The laws under which the metropolis is governed date from 1837, 1867, and 1871. The first two defined the powers and functions of the prefects; the last regulated the organization of the council. There is no mayor of the city as a whole. Instead, the chief executive officers are two coördinate prefects—the prefect of the Seine and the prefect of police. Both are appointed by the president of the Republic; both can be removed by him at any time; both are directly responsible to the Minister of the Interior. Both, it must be observed further, are prefects of the Seine *département*, which includes not only the city of Paris, but a

<sup>1</sup> For a vivid description of the civil service of Bordeaux, see W. R. Sharp, *The French Civil Service*, Chap. xiii, reprinted from *Nat. Munic. Rev.*, Dec., 1928. Cf. H. M. Skelbourne, "University Training of Municipal Officials in France," *Nat. Munic. Rev.*, Apr., 1932, pp. 256-259. The best brief account of the government of French communes is E. M. Sait, *Government and Politics of France*, 254-268, and the best longer one is W. B. Munro, *The Government of European Cities*, Chap. i. Principal French works include L. Morgand, *La loi municipale* (10th ed., Paris, 1923); M. Leroy, *La ville française; institutions et libertés locales* (Paris, 1927); and, in encyclopaedia form, M. Felix, *Petit dictionnaire de droit municipal* (Paris, 1926).

considerable amount of surrounding country.<sup>1</sup> Hence, together they have all of the powers and functions belonging to a prefect in any department and, in Paris, those as well that would be possessed by the mayor if there were one. Among numerous other duties, the prefect of the Seine supervises the general administration of the city's affairs as carried on in the 20 *arrondissements*, or wards—subdivisions which have a mayor, a group of *adjoints*, and permanent administrative staffs (but no elective councils), on the analogy of the ordinary communes. The prefect of police has independent control (subject only to the Minister of the Interior) of all police organization and activities.

The municipal council consists of 80 members elected by popular vote, in single-member districts, for a term of four years. In organization, sessions, and procedure, it is not notably different from an ordinary communal council, although it occasionally sits with 21 representatives of the two suburban *arrondissements* of Saint-Denis and Sceaux to form the council of the Seine department. Like any communal council, it votes the municipal budget; and it has some other important powers. It, however, has scant control over administrative activities. Such control—the more effective for being wielded at close range—emanates not from the Hôtel de Ville where the council sits, but from another structure a few blocks distant which houses the Ministry of the Interior. Many Parisians consider that their city ought to have a larger amount of self-government. Such “home rule” sentiment, however, stirs no response in a Parliament drawn mainly from the somewhat jealous, if not suspicious, provinces.<sup>2</sup>

For fifty years, discussions looking to the improvement of government in France have centered largely around two main topics. One is the electoral system; the other, the system of local government and administration. The scheme of local government outlined in the foregoing pages is criticized on many grounds, among them (1) that it sprang from imperial bureaucracy and is out of keeping with the democratic character of the French people and of their national institutions;<sup>3</sup> (2) that it

A system both criticized and defended

<sup>1</sup> The jurisdiction of the prefect of police, indeed, includes some portions of the adjacent department of Seine-et-Oise.

<sup>2</sup> For fuller treatment of the subject, see W. B. Munro, *The Government of European Cities*, 91–108. Cf. A. Guérard, *L'Avenir de Paris* (Paris, 1929).

<sup>3</sup> “We have,” said a former president, M. Deschanel, “a republic at the top, the empire at the base.”

operates to give the central authorities arbitrary and altogether excessive control over affairs and interests of a purely local nature; (3) that it stifles local initiative and frustrates a healthy provincial life; (4) that it transmits to local government something of the same instability that characterizes ministerial régimes at Paris; (5) that it makes for an undue multiplicity of functionaries, entailing unjustifiable burdens for the taxpayers; (6) that it gives the national government too many agents through whom to influence the voters in parliamentary elections; and (7) that it overburdens not only the ministries at Paris but Parliament as well, resulting in neglect of large national concerns, while at the same time producing intolerable delays in the conduct of departmental and communal affairs. Counter-arguments are, of course, not wanting, such as (1) that close supervision by the central government is necessary to protect the taxpayers against extravagance on the part of the local—especially the communal—councils; (2) that the central government must rely heavily upon the local authorities for the execution of national laws, and hence must be in a position to control them; and (3) that while the people have been told by philosophers and reformers, *e.g.*, De Tocqueville and Taine, that they ought to want, and to have, larger control of their local affairs, they have no such dislike of being governed by authorities not of their choosing as persists in England and America, and have evinced no strong desire for change.<sup>1</sup> There are categorical denials, too, that the number of officials is excessive; and as for political pressure from Paris through these officials, it is not difficult to prove that, while still a reality, it is decreasing. If further reasons why the system has persisted were desired, one could cite (1) the vested interest of the great body of officials and employees, a mighty bureaucracy both holding and enjoying power; (2) the disposition of ministers and deputies to cling to the patronage that the present arrangements afford; (3) the psychological effect of the tradition that every political régime in France is on trial and that those responsible for its preservation must, as a matter of ordinary precaution, dominate and control the entire administration of the country from the center.

Still the query once posed by Lord Bryce persists: "Why trust

<sup>1</sup> The French attitude illustrates the regrettable soundness of Professor Graham Wallas' observation that "democracy is rarely interested in administration."

a nation of forty millions to deal with questions vital to national existence, and refuse to trust the inhabitants of departments and communes with the management of their own local affairs?"<sup>1</sup> And for decades French parliamentarians, administrators, writers, and reformers have discussed the problem, even though the people generally, caring more about being governed well than about governing themselves, take little interest in it. What changes, chiefly, are proposed? Some, it may be noted at the outset, look rather to economy and efficiency than to more self-government. One of the commonest suggestions has been the abolition of the office of subprefect, as being essentially unnecessary. Far from moving in this direction, however, the reconstruction decrees of 1926 gave the subprefect new powers and made him more important than ever before. Other plans look to consolidation and simplification of local government areas. Like the counties in many of our American states, the French departments were laid out more than a century ago so as to be of such size that the inhabitants could travel to the capital city and return to their homes in the course of a day. Conditions in a motor age are so different, however, that both the American county and the French department might now be enlarged considerably with no serious inconvenience to the people, and with highly desirable savings upon buildings, salaries, electoral expenses, and other matters; and not only do we have in our own country a somewhat promising movement for county consolidation, but in France there are proposals to reduce the number of departments by a third, a half, or even more, whether or not some plan of regional organization (to be explained presently) shall be adopted.<sup>2</sup> The number of *arrondissements* was reduced appreciably in 1926, and there are those who would do away with this comparatively unimportant unit altogether. Even the commune does not escape the eye of the critic. Why should there be hundreds of communes with only a few score inhabitants—why 20,000, each with its own independent officialdom and budgetary burden, yet with fewer than 500 people? To be sure, practically every little community that ever had separate organization wants to retain it, or to regain it if lost. To be sure,

Proposed  
changes:

1. Consolidation  
of areas

<sup>1</sup> *Modern Democracies*, 283.

<sup>2</sup> See R. Le Conte's scheme for cutting the departments from 90 to 34, in *Rev. du Droit Public et de la Sci. Polit.*, July-Sept., 1926, pp. 530-533.

too, the additional expense involved is less than it would be if mayor, assistants, and councillors were salaried. Nevertheless, important economies and other improvements could be realized if extensive consolidations were carried out; and proposals in this direction, *e.g.*, for the elimination of all communes of less than 200 inhabitants, are now and then heard. As we noted when speaking of local government in Great Britain, changed physical conditions and growing tax burdens are in many lands—including our own—tending to drive out the little administrative area in favor of the larger one.<sup>1</sup> It seems inevitable that, notwithstanding powerful centers of resistance in the communes, France will sooner or later yield to the same imperative trend.

2. Decon-  
centration  
and decen-  
tralization

Then there are proposals for deconcentration and decentralization. To deconcentrate is to transfer discretionary powers from the Ministry of the Interior to the prefect—from the prefect, too, to the subprefect or other lesser agents of the national government functioning in the departments. To decentralize is to transfer powers outright from the central government to councils or other authorities belonging essentially to the local areas. Of deconcentration, there already has been a good deal; the decrees of 1926, for example, moved many powers outward along the lines that reach from Paris to the desks of the prefects. Decentralization, likewise, has been progressing; here again, the decrees of 1926 added a chapter. Anyone, however, who has read the foregoing description of the administrative system as it still exists will be prepared to admit that long distances remain to be travelled before the French people locally can be said truly to govern themselves. Nor will one be surprised to learn that, notwithstanding the stout defense of present arrangements certain to be heard whenever the subject is broached, proposals for speeding up both deconcentration and decentralization—even to such lengths as the total suppression of the prefect's office—receive a good deal of thoughtful attention, even in government circles at Paris.

3. Regional-  
ism

The most ambitious proposal of all is that the country be reorganized, on historical and cultural lines, into a number of great self-governing divisions or "regions." This is no new idea. The philosopher Comte worked out a plan for 17 such regions in 1854, Le Play for 13 in 1864; and under the Third Republic a

<sup>1</sup> See p. 406 above.

long line of politicians, geographers, and others have tried their hand at something of the kind, not to mention as many as 25 ministerial and parliamentary proposals relating to the matter. As developed by some, the scheme would call for doing away with the departments altogether; by others, for retaining the departments (as now, or in smaller number) for certain administrative purposes, with the superimposition upon them of larger units to which most of the present work of local government—aside from that which in the nature of things must be left to the commune—should be transferred. In either case, the “region,” with an elected council approximating a provincial parliament and a strong executive, probably also elected locally, would be endowed with far more autonomy than any French area of local government at present enjoys. For the purpose, some of the old provinces swept away in 1789–90—Normandy, Brittany, Limousin, Poitou, Provence, Languedoc—would probably be revived; at all events, effort would be made to lay out the new areas with regard for not only physical compactness but historical traditions and cultural unity such as the purely artificial departments have commonly lacked. Most plans propounded have contemplated some 20 or 25 regions, as compared with 33 recognized provincial areas in 1789.

Naturally, regionalist proposals differ widely not only as to the number and nature of the regions to be established, but as to the amount and kinds of power to be bestowed on the regional governments; indeed, one reason why the movement makes no faster headway is the inability of its supporters to unite on a definite program. In general, plans that have emanated from, or engaged the attention of, ministers and parliamentary committees have been moderate in scope; and some measure of the distance that the proposal still has to cover if it is ever to prevail is supplied by the fact that never to this day has any one of even these less drastic plans in which committees have interested themselves been debated in either the Chamber or the Senate. Penetrating far beyond all other responsible proposals for local government reform, regionalism inevitably stirs opposition on many grounds, *e.g.*, (1) that it would tend to revive the provincial, or sectional, spirit which in times past was a chief obstacle to national unity; (2) that it would start the country on the road to federalism; (3) that the local government system as it stands is capable of

being reformed to meet such popular demand as really exists without breaking up the jurisdictional areas to which the people have grown accustomed. Admittedly, the regionalist concept has attractiveness. It has genuine vitality as well. To the present time, however, the very respectable amount of reconstruction of local government and administration that has taken place has been pursued on different lines; and so far as one can peer into the misty future, this will continue to be the case.<sup>1</sup>

<sup>1</sup> The general subject of centralization and decentralization is dealt with in L. Duguit, *Law in the Modern State*, Chap. iv; W. R. Sharp, *The French Civil Service*, Chap. ii; R. K. Gooch, *Regionalism in France* (New York, 1931), Chaps. ii-iii; P. Larogue, *La tutelle administrative* (Paris, 1931); and J. W. Garner, "Administrative Reform in France," *Amer. Polit. Sci. Rev.*, Feb., 1919. The subject is considered in relation to regionalism in Gooch, *op. cit.* (the best work on the subject in English); C. J. H. Hayes, *France: A Nation of Patriots*, Chap. xi; R. H. Soltau, "Regionalism and Administrative Decentralization in France," *Economica*, June, 1922; N. Carpenter, "The Nature and Origins of the French Regionalist Movement," *Pub. of Amer. Sociol. Soc.*, May, 1930; and C. Brun, *Le régionalisme* (Paris, 1911).

**PART II**  
**GOVERNMENTS UNDER**  
**DICTATORSHIP**





# 1. GERMANY

## CHAPTER XXX

### FROM EMPIRE TO REPUBLIC

Not many years ago, the government of Germany could have been dealt with, quite as appropriately as that of Great Britain or France, under the caption adopted for Part I of this book, "Parliamentary Democracies." Defeated in arms, the country had in 1918 seen its autocratic imperial and state governments fall in ruins, and, newly equipped with the Weimar constitution of 1919, had mounted almost overnight to the position of the most democratic (at least on paper) of larger European states. Ten years of valiant effort by sturdy political elements that had made the new system and believed in it failed, however, to establish it sufficiently in the confidence and affection of the nation to enable it to withstand the assaults eventually launched against it. Rapidly disintegrating after 1929, the democratic parliamentary régime was dealt a staggering blow by the triumphs of Adolf Hitler and his National Socialists in 1932-33, and in the last-mentioned year suffered the humiliation of being unceremoniously pushed aside to make way for another of the dictatorships for which post-war Europe has become famous. People who had followed German affairs at close range, and who knew the depths of disillusionment and despair into which military defeat and economic disaster had plunged the bulk of the people, were to some extent prepared for the *débauche*. The world in general, however, was both startled and terrified. Friends of democracy realized that a cause already struggling against heavy odds had suffered another serious set-back; devotees of international peace saw the possibility, if not probability, of consequences appalling to contemplate.

An astonishing political cycle

Thus it came about that Germany ceased to qualify as a "parliamentary democracy" and took her place once more among European countries having autocratic government.

And an uncertain future

Autocracy of kings and emperors is, to be sure, almost a thing of the past. With only one or two exceptions,<sup>1</sup> European autocrats today do not wear crowns. But whether it be Italy, Russia, Poland, Yugoslavia, Hungary, or Germany, popular government on parliamentary lines is largely or completely extinct, and dictatorship in the saddle. What is ahead in the Germany that has turned its back on the Weimar régime, no man can say. To a considerable extent, the national constitution has been superseded by arbitrary Hitlerian laws and decrees. Parliamentary institutions have been placed in storage. A Fascist state is fast rounding into form. But the future is uncertain. A few turns of the political wheel, and a repudiated system might be called back to life, at least in its essentials. The chances appear slender, at all events for the near future; but stranger things have happened. Meanwhile, prophecy quite aside, our present purpose will be fulfilled by (1) reviewing the salient features of German government in the Empire of pre-war days; (2) describing more fully the republican system envisaged in, and partly realized under, the Weimar constitution—a gigantic political experiment which, whatever its ultimate outcome, merits the thoughtful attention of every student of government; and (3) showing how the “Nazis” launched a feverish country upon the still largely uncharted course of the “Third Reich.” In the main, the chapters that follow will deal with German government under the parliamentary régime of 1919–33. Although manifestly already in the making, the new national constitution which the Nazis envisage—if it ever fully materializes—is still in the future; and as for the political order existing at the moment in Nazi hands, it is changing far too rapidly, and is, in general, much too nebulous, to be susceptible of systematic description. The whole discussion converges, however, upon the rise and early deeds of the dictatorship, and on this account it is placed in the section of the book devoted to governments of that character.

Political geography of  
eighteenth-century  
Germany

If you look at a map of the Europe of a century and a half ago, you will find throughout a vast central area stretching from France on the west to Poland and Hungary on the east, and from Denmark on the north to the toe of the Italian boot on the

<sup>1</sup> Chiefly King Alexander of Yugoslavia.

south, a veritable jumble of splotches of color indicating kingdoms, principalities, electorates, duchies, margravates, bishoprics, and what not—the whole plastered over with one grand caption, “Holy Roman Empire,” or simply “The Empire.” Except for the names of rivers and towns, and a few regional names such as Saxony, Bavaria, and Württemberg, you would hardly recognize anything suggestive of present-day Germany. You realize, however, that the Germany of Hindenburg and Hitler must somehow have been built out of these bewilderingly interlaced political units; and although you may have thought of this newer Germany with its various large and small *Länder*, or states, as little better than a patchwork of political geography, you marvel that even so great a degree of unity and simplicity should have been achieved, considering the feudally pulverized areas out of which the Reich of our time had to be constructed.<sup>1</sup>

Such unity as was implied in the term “Holy Roman Empire” was indeed illusory. There was, to be sure, an emperor, nominally chosen by a handful of lay and ecclesiastical magnates but in practice an hereditary prince of the house of Habsburg. There was also a diet. But the former commanded only shadowy allegiance, and the latter had long since lost all genuine claim to power. At best a loose federation of sovereign principalities, the Empire was, in the witticism of Voltaire, neither holy nor Roman, nor yet in any proper sense an empire at all. So decrepit indeed was this once proud political creation that the unification of Germany neither was nor could have been expected to be its handiwork; and Napoleon entirely erased it from the map in 1806. For the development of German union, one looks rather to a small, and in the beginning unpromising, principality in the north, the “mark,” or electorate, of Brandenburg, whose rulers, belonging to the house of Hohenzollern, early in the seventeenth century extended their sway eastward over the duchy of Prussia and westward over that of Cleves, and, moving on to other acquisitions, found themselves even by 1650 the sovereigns of a larger area than any other of German character except Austria. In 1701, the title of elector of Brandenburg was dropped and that of king of Prussia assumed; and in the long reign of Frederick the

The shadowy  
Holy Roman  
Empire

The rise of  
Prussia

<sup>1</sup> At the hands of the Nazi dictatorship, consolidation has so far progressed in the past year or two as to threaten the very existence of the *Länder*. See pp. 698–699 below.

Great (1740-86)—termed by the jurist Bluntschli “the first and most distinguished representative of the modern idea of the state”—seizures from Austria and annexations in other directions brought the kingdom to the point where it was reckoned one of the principal European powers. Even so, the German portions of central Europe at the close of the eighteenth century were still cut into hundreds of practically independent states, ruled by despotic princes, great and small. Society was as yet feudal; half of the people were serfs.

Napoleon  
reorganizes  
Germany

As every student of history knows, Napoleon's armies swept victoriously across German territory and Napoleonic statecraft followed with revolutionizing transformations. Once Jena and Tilsit had brought central Europe to his feet, the conqueror not only did away with the shadowy Empire,<sup>1</sup> but blotted out most of the petty principalities, reduced Prussia to almost half its previous area, and erected most of the surviving states into a far-flung Confederation of the Rhine, meant to be a tributary and eastern bulwark of France. In the main, these plans miscarried, and when the tide of fortune turned, the Germans were found on the side against the Corsican. The consolidations, however, proved for the most part permanent, and the German-speaking world—especially Prussia—though for a time in the depths of despair because of the unexpected and humiliating subjugation, came off with a new consciousness of common interests, a reformed economic order, improved methods of administration, the beginnings of strong national armies, and a generally enhanced morale. Napoleon, remarks a well-known writer, was not least among the makers of modern Germany.<sup>2</sup>

The German  
confederation  
of 1815

When readjusting the affairs of war-torn Europe, the Congress of Vienna restored to Prussia, as one of the victors at Waterloo, some of the territory that she had lost, and then organized the now emerging Germany in a confederation of 38 (after 1817, 39) states, under the perpetual presidency of Austria. The union was hardly more substantial than that under the old Empire.

<sup>1</sup> In anticipation of the probable extinction of the dignity of emperor of the Holy Roman Empire, the Emperor Francis II, in 1804, assumed the title of emperor of Austria, under the name of Francis I. The new title endured until the break-up of the Dual Monarchy at the close of the World War.

<sup>2</sup> W. B. Munro, *The Governments of Europe* (rev. ed.), 590. H. A. L. Fisher, *Studies in Napoleonic Statesmanship, Germany* (Oxford, 1903), is an informing treatise.

For, although there was a diet, consisting of representatives appointed by the princes, and charged with responsibility for protecting the country against external aggression and internal disorder, the body had no power to levy taxes or to assert other authority over the people directly, and furthermore could arrive at decisions on important matters only by unanimous vote, which could but rarely be obtained.<sup>1</sup> To all intents and purposes, the members were only diplomatic agents, voting as instructed by their governments, the confederation itself being hardly more than an alliance of quasi-sovereign states. A *Zollverein*, or customs union, gradually built up under Prussian leadership in ensuing decades, lent something of economic solidarity to the structure. But of genuine political unity, there was little. Two mutually jealous states stood out head and shoulders above the rest, *i.e.*, Austria and Prussia, and around them the lesser ones ranged themselves in two equally jealous and suspicious camps. When Austria and Prussia could agree, things could usually be done. When, as commonly happened, they took opposite sides of a question, deadlock invariably paralyzed action. Fruitless wrangling and intrigue exposed the diet to endless ridicule.

The struggle with Napoleon brought Germany, however, a good deal more than merely a clumsy new political structure. A sense of nationality was awakened, and with it a desire for less autocratic government. For three decades thereafter, people of liberal inclinations waged, against great odds, a stubborn campaign for a new national state, parliamentary institutions, and guarantees of personal freedom. During the whole of this period, however, the malign influence of the reactionary Austrian minister, Prince Metternich, rested like a blanket upon all central Europe, and until near the middle of the century little chance for liberalization appeared. To be sure, beginning in 1816, written constitutions, as ordained by the Congress of Vienna, were promulgated in most of the states. In no instance, however, was a popular form of government provided for, and in the two most important states, Austria and Prussia, reactionary princes contrived to avoid taking any step of the kind at all. In 1847, Frederick William IV of Prussia cautiously called together the members of the provincial diets of his country in a *Vereiniger*

The mid-century liberal movement and its collapse

<sup>1</sup> In recognition of the glaring inequality of the states in population and importance, more voting power was assigned to the larger than to the smaller ones.

*Landtag*, or "United Diet." But when these estimable gentlemen fell to discussing constitutions and legislative privileges, he reminded them that he was better able to judge the value of political institutions than they were, and sent them home. Never, he declared, would he allow "to come between Almighty God in heaven and this land a blotted parchment, to rule us with paragraphs, and to replace the ancient, sacred bond of loyalty."

The failure of  
1848

Matters were brought to a crisis by the revolution of 1848 in France. All over Germany, sympathetic revolt broke out; no one had realized how much latent strength the reform movement had gathered. Prince after prince, panic-stricken, offered concessions, and if only the reform forces had been agreed upon a program and ready to strike while the iron was hot, a liberal German Empire might then and there have become a reality. This, in turn, might have meant a very different future for the German people and for the world. Some of the liberals, however, envisaged only a constitutional monarchy; others were wedded to the idea of a republic. Some did not look beyond a moderately strengthened federation; others were prepared to be satisfied with nothing less than a unitary government like that of France or England. The upshot was that when, in May, 1848, a National German Parliament, elected by manhood suffrage, convened at Frankfort-on-the-Main, the opportunity to replace the discredited Confederation with a united, liberally governed Germany was lost. While visionary and dogmatic delegates harangued their colleagues through long months in wearisome attempts to convince them that this clause or that should go into the proposed new constitution, the revolution spent its force and the princes plucked up courage to offer effective resistance. A new frame of government, providing for a federally organized constitutional empire, with a parliament of two houses, manhood suffrage, and a responsible ministry, was indeed agreed upon in 1849.<sup>1</sup> But when the imperial crown was offered to the Prussian sovereign, he waved it aside contemptuously; the government of neither Prussia nor Austria, nor in fact of any other of the larger states, endorsed the plan; and the entire effort collapsed. Never again until 1918 did liberalism have so good a chance to set Germany on the high road toward free and enlightened government.

<sup>1</sup> Text in F. F. M. von Bieberstein, *Verfassungsrechtliche Reichsgesetze und Wichtige Verordnungen* (Mannheim, 1929), 85-118.

Germany was destined to become a constitutional empire, but not through the efforts of professors, students, poets, and philosophers, and not on the lines that such idealists would have projected. Long after the exciting days of 1848, Bismarck wrote in his *Reflections and Reminiscences* that not even when the turmoil was greatest did he consider the situation "unfavorable," since the real "barometer" was not "the noise of parliaments great and small" but "the attitude of the troops." It was unfortunately through the use of these troops—by "blood and iron"—that the Germany of more recent generations was created. Becoming prime minister of Prussia in 1862, Bismarck guided the political destinies of the German people for a full generation. Prussia had indeed acquired a written constitution in 1850—the only tangible result of the 1848 revolutions east of the Rhine. But a refractory parliament was not allowed to stand in the way of Bismarck's plans. Assuring the chambers that German unity was not to be attained "by speeches and resolutions of majorities," the doughty minister induced the king to order a dissolution and for four years taxed and borrowed money independently, building up an army suitable for his purpose. Already plotting a forcible ejection of the polyglot Austria from the Confederation as a step toward converting the feeble structure into a consolidated German state, he cynically dragged his intended victim, in 1864, into a war with Denmark, and then, when all was ready, in 1866 announced a plan for reorganization which the Habsburg monarchy must inevitably reject—going on, as soon as the refusal was received, to declare the Confederation dissolved and hurl the Prussian army against the unprepared rival. In the long run, the decision was disadvantageous to Germany, in that it led to the exclusion of many millions of Germans whose descendants today would be numbered among the Republic's citizens if permitted by the terms of the treaty of Versailles.<sup>1</sup> But it served its immediate purpose, and possibly, as Bismarck plainly thought, was essential to any genuine German unification.

Unification  
achieved

A short war ended in Austria's complete defeat; and thereupon Prussia not only absorbed into her own territory a number of lesser states which had shared in her triumph, but engineered the formation of a new German union, a "North German Confed-

<sup>1</sup> See p. 688, note 2, below.



eration," consisting of all of the surviving states—22 in number—north of the Main River. For the time being, the southern states of Bavaria, Baden, Württemberg, and Hesse-Darmstadt were left to their own devices. But the constitution of the new Confederation left a door open for them, and the Franco-Prussian war of 1870, in which they unanimously cast in their fortunes with Prussia, furnished opportunity for a series of hard-won treaties bringing all four into the union, notwithstanding their strong particularist traditions, and clearing the way for the next great step in Bismarck's program. On January 18, 1871, in the famous Hall of Mirrors in the palace of Louis XIV at Versailles, William I of Prussia, president of the North German Confederation, was proclaimed *Deutscher Kaiser*, "German Emperor." By its reminder of days when it meant theoretically more but practically less than now, the title, said Bismarck, would "constitute an element making for unity and concentration."<sup>1</sup>

The Empire so proudly announced to the world while German cannon were still pounding the beleaguered and fast-weakening city of Paris is now a thing of the past. In its place stands a republic, the fruit of war and revolution. For forty years, the new Germany advanced by leaps and bounds along the lines that Bismarck had laid out for it; until William II chose to "drop the pilot" in 1890, the Iron Chancellor was himself the steersman of its course. Population increased by more than half; industry made swifter strides than in any other country of the world; commerce put the trade of even Great Britain on the defensive; a colonial empire was built up; the army became the most formidable in Europe, the navy—though scarcely started before the end of the nineteenth century—second only to the British. With it all went the development of a vigorous and efficient system of government and administration which, notwithstanding its illiberal features, commanded the confidence of most Germans and the admiration of many foreigners. A bare half-century, however, brought collapse to a political order which might well have been considered impregnable. Imperialism and militarism led to war; war brought defeat; defeat opened the

<sup>1</sup> The founding of the Empire is described briefly in E. Howard, *The German Empire* (New York, 1906), Chap. i, and E. Henderson, *Short History of Germany* (new ed., New York, 1916), Chaps. viii-x; more fully in M. Smith, *Bismarck and German Unity* (New York, 1910), and J. W. Headlam, *Bismarck and the Foundation of the German Empire* (New York, 1899).

flood-gates of revolution; and in 1918-19, a chastened people, reduced in territory and hedged about with restraints imposed by triumphant allies, faced the task of regaining national prosperity and strength with the aid of a political system markedly unlike anything that the country had ever known before. The German government which we are to study is not that of the vanished Empire, but that of the storm-tossed Republic of the last decade and a half. Even today, the imperial system that is gone cannot, however, be ignored. Quite apart from the question of the extent to which its spirit, and even its forms, may be brought back at the hands of National Socialist reactionaries, it challenges the attention of the student of political institutions by its own inherent interest; its fate is a lesson and warning for the statesman; much was carried over from it into the new era, and even that which perished completely helps by contrast to illumine the character and significance of the institutions, processes, and ideas of later years. Some features of the Empire as a political structure may therefore appropriately be brought to view at this point.

To begin with, the Empire was but an enlarged edition of the North German Confederation. Its constitution was the document prepared by Bismarck (in a single afternoon, we are told) for the Confederation, with only such slight changes as were entailed by the adhesion of the southern states and the introduction of the title of emperor.<sup>1</sup> The king of Prussia became emperor instead of president, and a popularly elected Bundestag was renamed "Reichstag," with appropriate enlargement of membership. Otherwise, practically everything remained the same. The red-letter date in the building of the Empire was therefore not 1871 but 1867. The constitution was a deftly framed instrument—concise, clear, and practical. It contained no bill of rights, nor much of anything else bordering on the theoretical.<sup>2</sup> It provided for the principal organs of government—emperor, chancellor, Bundesrat, Reichstag. It defined, in much detail, the relations of the states with the Empire, and was

The Empire  
and its con-  
stitution

<sup>1</sup> The text of the constitution, as revised in 1871, will be found in F. F. M. von Bieberstein, *op. cit.*, 119-147, and in English translation in W. F. Dodd, *Modern Constitutions*, I, 325-351, and many other places.

<sup>2</sup> There were bills of rights in some of the state constitutions, including the Prussian, but with scant provision for enforcement.

especially full on subjects like tariffs, railways, posts and telegraphs, navigation, finance, and the army—matters over which, as Bismarck well understood, it would be necessary for the imperial authorities to have extensive control if Germany were to attain her coveted place among the nations. A mode of amendment was provided also, at once easy and difficult: any amendment might be adopted by vote of the Bundesrat and Reichstag, like an ordinary law, except that any amendment against which as many as 14 votes were cast in the Bundesrat was to be considered lost. The catch lay in the fact that the kingdom of Prussia, with 17 votes of her own in that body, was able to defeat any proposal single-handedly, while no other state had enough votes to do so. Americans sometimes complain because 13 of our states can, if they will, defeat a constitutional amendment. In the German Empire, it was possible for a single state to do it. Down to 1914, a total of 11 constitutional amendments were adopted, but none working any very profound change, unless one of 1873 empowering the Empire to establish a uniform system of civil law be excepted.<sup>1</sup>

The juristic nature of the Empire is a rather abstruse matter, on which not all Germans are agreed. There can be no doubt, however, that a loose confederation of sovereign principalities had been converted into a much stronger type of state with a federal system of government. Wherever sovereignty was to be found, it certainly was no longer in Prussia, Bavaria, and the rest as individual political entities.<sup>2</sup> Powers of government were deftly divided between the states and a new super-entity, the Empire. It is because of this division that the system was federal—not for the reason merely that there was a division (for everywhere, even in England and France, powers are divided between national and lesser governments), but because in Germany, as in Switzerland and the United States, the division was ordained in the fundamental law, and could be altered

<sup>1</sup> This amendment became the basis of the great civil code of 1900. See p. 787 below.

<sup>2</sup> This is disputed by some able south German constitutional lawyers, e.g., Max Seydel, but is upheld by majority opinion. The best view seems to be that sovereignty resided not in the individual states, nor in the Empire as such, and certainly not in the "people," but rather in the "totality of the states" as represented in the Bundesrat (Bismarck's phrase for it was *Gesamtheit der verbundenen Regierungen*). See F. K. Krüger, *Government and Politics of Germany* (Yonkers, 1915), Chap. iv.

legally only by constitutional amendment. The general principle on which powers were divided was the same as in the two countries mentioned; that is to say, the powers of the national government were enumerated and delegated, while those of the states were unenumerated and residual. As in our own country, certain powers were given exclusively to the national government, *e.g.*, control over national citizenship, the navy, regulation of the merchant marine, tariff legislation, posts and telegraphs, weights and measures, patents, and coinage. Other powers were vested solely in the states, *e.g.*, determination of their own forms of government, laws of succession, relations of church and state, public instruction, highways, and police. Still others were curiously divided between Empire and states. For example, notwithstanding that the conduct of foreign relations became to all intents and purposes an exclusive imperial function, the states—quite unlike those of the United States—were permitted to exchange ministers with foreign states, to receive (but not send) consuls, and under certain conditions to conclude treaties. Powers of taxation were shared, too, although in this case the states enjoyed a virtual monopoly and the Empire got such funds as it needed, apart from revenues from posts, telegraphs, customs duties, and the like, by levying *matricularbeiträge*, or contributions, upon the states.

As time passed, the Empire tended to draw to itself an ever-increasing measure of actual power, partly by constitutional amendment, but more largely by usage and by progressively extended exercise of legislative authority. The same centralizing tendency has been witnessed in the United States; but whereas encroachment on state powers has here been held somewhat in check by judicial review, in the German Empire there was no restriction of the sort.<sup>1</sup> Again and again, protest was heard (especially from Bavaria and other southern states) against the growing consolidation—some called it “Prussianization”—of the Empire.

As a federal structure, imperial Germany presented a number of unusual aspects. In the first place, it was, in ex-President Lowell's oft-quoted characterization, a compact between “a lion, a half-dozen foxes, and a score of mice.”<sup>2</sup> The lion was

Some peculiar features

<sup>1</sup> State laws could be invalidated if in conflict with imperial laws, but the latter, if properly enacted and promulgated, could not be questioned.

<sup>2</sup> Apart from the *Reichsland*, or imperial domain, of Alsace-Lorraine, which in

Prussia, greater both in area and in population than all of the remaining 24 states combined. The tiniest of the "mice" was the free city of Bremen, with an area of only 99 square miles, although Schaumburg-Lippe, with 44,092 people in 1905, was smallest in terms of population. The American states differ widely in extent and number of inhabitants; Rhode Island could be set down in Texas 100 times, with room to spare; New York has nearly 14 times as many people as Nevada. But not even the largest or most populous among them towers over the rest in a fashion approaching that of Prussia in the German union, either before 1919 or since. Such inequality must inevitably have given some states greater weight than others. But this result was aggravated under the Empire by constitutional provisions deliberately introducing legal, in addition to physical, disparity. In the United States, all states are legally equal; whatever rights and powers are possessed by one are possessed by all. Not so in imperial Germany. When consenting to cast in their lot with the other 22 states in 1871, Bavaria and Württemberg reserved the right to administer independently the postal and telegraph services within their borders; Bavaria, Württemberg, and Baden, exclusive right to tax beers and brandies manufactured by their people; and Bavaria, the right to administer her own railways. Still more significant were the special prerogatives of Prussia. Her king was ex-officio emperor; she alone had votes enough in the Bundesrat to defeat constitutional amendments independently; all committee chairmanships in that body except one were hers. Moreover, to these constitutional advantages were added others arising from her superior population, *e.g.*, a majority of seats in the Reichstag; still others fixed by usage, *e.g.*, the almost invariable appointment of her prime minister as imperial chancellor; and yet others flowing from interstate treaties, notably those by which she acquired exclusive right to recruit, drill, and administer the armed forces of all of the states except Bavaria,

1911 was raised to quasi-statehood, there were 25 states, as follows: the four kingdoms of Prussia, Bavaria, Saxony, and Württemberg; the six grand-duchies of Baden, Hesse, Mecklenburg-Schwerin, Saxe-Weimar, Mecklenburg-Strelitz, and Oldenburg; the five duchies of Brunswick, Saxe-Meiningen, Saxe-Altenburg, Saxe-Coburg-Gotha, and Anhalt; the seven principalities of Schwarzburg-Sonderhausen, Schwarzburg-Rudolstadt, Waldeck, Reuss Älterer Linie, Reuss Jüngerer Linie, Lippe, and Schaumburg-Lippe; and the three free cities of Hamburg, Bremen, and Lübeck.

Württemberg, and Saxony. Prussia had created the Empire, and with the aid of carefully devised constitutional provisions and interstate compacts, her natural preëminence in the union enabled her to run it, with only a certain amount of grudging deference to the wishes of her associates.

One other interesting feature requires mention. Although in our own country increasing use is made of state officials and agencies in administering national functions,<sup>1</sup> our policy has commonly been to provide national machinery to the full extent required for executing national laws. This, however, has not been the German plan. Under the Empire—and the same was true in somewhat less degree under the Republic up to the time when, in 1933, the states were brought under full centralized control—the national government looked for the administration of most of its laws, not to officials appointed and paid from Berlin, but to the functionaries of the various states. Exception was made in the case of the foreign service and of higher officials in the postal, telegraph, and a few other services; and military administration was centralized, though in Prussian rather than imperial hands. But otherwise the states were relied upon, subject to only a certain amount of inspecting and directing power in the imperial authorities. So far as machinery went, the imperial government, lacking not only a nation-wide judicial establishment, but also most of the usual administrative equipment, was but part of a government, quite incapable of carrying on the affairs of the nation except as the states collaborated in the task. It may be added that as a rule imperial legislation was drawn on broad and general lines, leaving latitude to the several states to enact more detailed regulations in conformity with it.<sup>2</sup>

The most conspicuous figure in the government of pre-war Germany was the emperor. The post which this now discredited dignitary filled was, however, a highly peculiar one, and few people except Germans ever really understood it. To all intents and purposes, it was merely a continuation of the *praesidium*, or presidency, which the constitution of the North German Con-

The imperial government:

1. The emperor

<sup>1</sup> Notably in connection with the National Guard and with various forms of federal aid. See A. N. Holcombe, "The States as Agents of the Nation," *South-western Polit. Sci. Quar.*, Mar., 1921.

<sup>2</sup> The constitutional and juridical nature of the Empire is dealt with in B. E. Howard, *The German Empire*, Chap. ii, and F. Krüger, *Government and Politics of Germany*, Chap. iv.

federation vested in the king of Prussia. As revised in 1871, the constitution prescribed that the incumbent should thenceforth bear the title of *Deutscher Kaiser* (German emperor). It, however, conferred few additional prerogatives; and from first to last the emperor, though ranking among the world's leading monarchs, had, as such, an amazingly small amount of power. As emperor, he had no throne, no salary, no palace. He was not even "emperor of Germany"—that would have implied sovereignty equally throughout the country—but only "German emperor." He was, however, king of Prussia—territorial sovereign of by far the largest of the states, and in that broad domain he was limited but slightly by constitutional forms; and this is what chiefly gave him power and importance. Some functions, to be sure, accrued to him as emperor. In this capacity, and not as Prussian king, he convoked, opened, and adjourned the Bundesrat and Reichstag, promulgated imperial laws, appointed the chancellor and other high administrative officials, exercised supreme command of the navy and, in time of war, of the army as well, and wielded large, though not independent, control over the conduct of foreign relations. Needless to say, these functions—especially the last two—carried with them a good deal of power. Even they drew importance, however, chiefly from being exercised by the mightiest of the territorial princes; and in practice it was never possible to say precisely where authority as emperor began and that as king left off. What William II could not do as Kaiser, he commonly could contrive to do as autocratic head of the most powerful state of the union.<sup>1</sup>

2. Chancellor and ministers

Equally unusual were the arrangements for imperial administration—in the lower levels because of the large use made of the state functionaries, as explained above; in the upper ones, because of the insertion between the emperor as titular head and the ministers as heads of departments of a most extraordinary official in the person of the chancellor. When drawing up the constitution of 1867, Bismarck provided for himself a place as sole adviser to the emperor. Ministers—more properly "state secretaries"—there were to be, but merely subordinates to the chancellor, selected and controlled by him, and functioning only as glorified chief clerks in charge of the routine work of the several

<sup>1</sup> On the reigning family, see H. Eulenberg, *The Hohenzollerns*, trans. by M. M. Bozman (New York, 1929).

departments. Any responsibility that they bore was solely to the chancellor, just as the responsibility which the revised constitution of 1871 imposed upon that official was (in practice at least) to the emperor alone. Throughout its history, the Empire had no cabinet at all—unless, as one writer puts it, the chancellor be thought of as a sort of one-man cabinet; and of course there was nothing approaching cabinet, or parliamentary, government in the English or French meaning of the term. Appointed by the emperor, and commonly holding simultaneously the post of premier of Prussia, the chancellor was at the same time presiding officer and official spokesman of the highly powerful Bundesrat and head of the imperial administration. He it was who carried all important legislative proposals, after adoption by the Bundesrat, to the Reichstag for its approval. He it was who guided and controlled the ministers, whose departments were in truth merely bureaus of the historic *Reichskanzleramt*, or Imperial Chancery. It was as imperial chancellor that Bismarck in effect ruled the country until his dismissal in 1890; and if later incumbents enjoyed less latitude, it was only because they were of smaller caliber and because William II was a less tractable master than his father and grandfather.<sup>1</sup>

Viewed from a distance, the German Empire seemed to have a bicameral parliament, with the Reichstag as a lower and the Bundesrat as an upper chamber. Examined more closely, the situation took on a different aspect. The Reichstag was a true parliamentary body. But the Bundesrat was of such exceptional character, and held so exalted a position, that one would be misled entirely to think of it as merely a branch of a legislature. More truly than the emperor or chancellor or any other organ, it was the pivot on which the entire imperial system turned. To begin with, the Bundesrat represented, not people, but states, or more properly the governments of states. To each state, or government, the imperial constitution allotted a definite quota of votes—not on the principle of equality as in the Senate of the United States, nor yet in exact proportion to population, but nevertheless with some regard for the states' relative size and importance. Prussia led the list with 17 votes; Bavaria followed

3. The Bundesrat

<sup>1</sup> Chancellor von Bülow resigned in 1909 under circumstances which led some people to infer that the principle of responsibility to the Reichstag had at last won recognition. This interpretation, however, proved ill-founded.



with six; 17 of the lesser states had only one apiece; the total being 58 until 1911, when three were bestowed on the *Reichsland* of Alsace-Lorraine, bringing the figure to 61.<sup>1</sup> These votes were under complete control of the respective state governments, and were cast in indivisible blocks by deputations of state officials (as large as the state cared to send, up to the number of votes possessed), dispatched to Berlin in a quasi-diplomatic capacity, and in strict accordance with instructions given from the various state capitals.<sup>2</sup> The Bundesrat was not, therefore, an ordinary deliberative assembly in which the members, acting as individuals, introduced proposals, debated them, and reached decisions. Most business came to it from outside—from the emperor through the chancellor, from the Reichstag, and from state governments—and on most matters, the members, if not already instructed, were required to turn to the home authorities to ascertain the course that they should take. Even so, the Bundesrat was a hard-working body, in session, behind closed doors, practically all of the time. The chancellor, or a substitute designated by him, presided; 12 committees functioned in such fields as foreign relations, finance, and military affairs; and not only did the body prepare and adopt all imperial legislation sent to the Reichstag for its endorsement (including the budget), but it issued administrative ordinances necessary for the enforcement of imperial laws, took steps to secure the execution of law in troublesome cases, shared the powers of appointment, treaty-making, and declaring war, audited accounts, and served both as a supreme administrative court and as a court of last resort in disputes between the states or between the imperial government and a state.

#### 4. The Reichstag

The Bundesrat represented the federal principle, but the Reichstag was broadly national. Its 397 members were chosen from single-member districts for a term of five years (barring dissolution), not by indirect election under an undemocratic class system as in the case of members of the Prussian House of Representatives, but directly, by secret ballot, with no plural voting, and by an electorate consisting of all duly registered male

<sup>1</sup> Alsace-Lorraine not being a full-fledged state, her votes, if producing a tie, if on constitutional amendments, or if giving the Prussian side of a question a majority, were not to be counted.

<sup>2</sup> By the senates in the case of the three republican "free cities."

citizens 25 years of age or over. The conduct of elections left little to be desired; and majority election was assured by a plan of second balloting under which, in the many "circles," or districts, in which, on account of the multiplicity of parties, no candidate received a majority at the first balloting, the voters were recalled to the polls a fortnight later to make their choice between the two who stood highest. The only distinctly unsatisfactory aspect of the electoral system was the extreme inequality of the electoral districts, arising from the fact that, notwithstanding vast changes in the distribution of population, no reapportionment of seats whatever took place after 1871. The constitution was silent on the subject, and the parties (chiefly Conservative and Centrist) that dominated the rural sections had no mind to see the fast-growing urban and industrial populations endowed with increased electoral power and the already annoying strength of the Social Democrats in the chamber proportionally increased.<sup>1</sup>

The Reichstag elected its own officers, made its own rules, set up various committees (through the medium of *Abtheilungen*, corresponding to the old French bureaux<sup>2</sup>), sat usually with open doors, and in general conducted itself like a true deliberative assembly. Observers rarely failed to note, however, the usually scant attendance of members and the general lifelessness of proceedings. Nor were the reasons difficult to discover. In part, they lay in the relative newness of the Reichstag as an organ of legislation and the inexperience of the German people with democratic institutions. But more largely they flowed from the fact that the constitutional order under which the Reichstag functioned gave no opportunity for the body to achieve a rôle of more than secondary importance. As indicated above, nearly all important legislation was considered first in the Bundesrat. The chancellor and other members of that body participated freely in Reichstag proceedings, in behalf of the measures in which they were interested. The government refused to recognize any power in the Reichstag to interfere with imperial offices and undertakings by amending the budget. No responsibility to the Reichstag was admitted by the chancellor or any

<sup>1</sup> Shortly before the World War, districts in agricultural East Prussia averaged 121,000 voters; in Berlin, 345,000.

<sup>2</sup> See p. 551 above.

other imperial authority, and interpellations, though indulged in, were pointless because nobody ever resigned on account of an adverse vote. A troublesome Reichstag could always be dissolved, and, contrary to the situation in France, dissolution was no dead letter. In a word, as the imperial government was actually operated, the Reichstag was a sort of fifth wheel to the wagon—a necessary concession to public sentiment and to world opinion, and on occasion useful, but never a parliamentary authority to be compared to the French Chamber or the British House of Commons. A mere “megaphone for political ambitions and complaints,”<sup>1</sup> with a voice that usually did not carry far, it was regarded with no very great respect even by the rank and file of the citizenry which it represented.<sup>2</sup>

The govern-  
ment of  
Prussia

Prussia made the Empire, by blood and iron; she had two-thirds of the territory and almost the same proportion of the population; the imperial constitution, reinforced by usage, installed her at almost every point of vantage; and from first to last she dominated and controlled. In its political philosophy and policy, the Fatherland was formed not by absorption of Prussia into Germany, but by absorption of Germany into Prussia; the part swallowed the whole. Unfortunately for the interests of liberalism, Prussia had a decidedly undemocratic system of government and was dominated by reactionary political forces. The constitution, dating from 1850, although providing for a parliament, gave no recognition to the principle of popular sovereignty. Its bill of rights amounted to hardly more than empty phrases; its provision for ministerial responsibility was never construed as a basis for cabinet government. Kingship, hereditary in the house of Hohenzollern, was to all intents and purposes absolute—at best, “absolute under constitutional forms,” according to Rudolph Gneist.

<sup>1</sup> H. Kraus, *The Crisis of German Democracy* (Princeton, 1932), 19. Other terms freely applied to the Reichstag by German critics were “debating society” and “hall of echoes.”

<sup>2</sup> The governmental system of the Empire is dealt with at greater length in F. A. Ogg, *The Governments of Europe* (rev. ed.), Chap. xxxv; H. Finer, *Theory and Practice of Modern Government*, I, Chap. ix, *passim*; A. L. Lowell, *Governments and Parties of Continental Europe*, I, Chap. v, and II, Chap. vii; and especially F. Krüger, *Government and Politics of the German Empire*, Chaps. v–xvi, and E. Howard, *The German Empire*, Chaps. i–v, vii, ix. Cf. E. Wetterlé, *Behind the Scenes in the Reichstag*, trans. by G. F. Lees (New York, 1918). A standard German work is P. Laband, *Das Staatsrecht des deutschen Reiches* (4th ed., Tübingen, 1901).

Ministers, although heading executive departments notable for their administrative efficiency, were as a rule not even members of either house of Parliament, much less answerable to the popular chamber for their acts and policies. The prime minister, as we have seen, was commonly also imperial chancellor, and thus one of the major instrumentalities through which the Prussian and imperial governments were locked together.

Several of the lesser German states had unicameral *Landtags*, or parliaments, but Prussia had a bicameral system, with a *Herrenhaus*, or House of Lords, and an *Abgeordnetenhaus*, or House of Representatives. Of these, the first was a partly appointed but largely hereditary body, recruited mainly from the ultra-conservative landholding aristocracy; while the latter, although elected under a scheme of manhood suffrage, was chosen according to a system which threw altogether disproportionate power to the well-to-do elements of the population. This electoral scheme—"the worst ever created," as Bismarck himself admitted—was, indeed, one of the curiosities of pre-war European politics. Starting in the Rhine province as a method of choosing members of municipal councils, it was adopted in the constitution of 1850 for national elections, and, spreading to local elections in other parts of the kingdom, became a characteristic Prussian institution. The essence of it was that (1) the people chose their representatives, not by direct vote, but through the medium of an electoral college in each of the "circles," or districts; (2) in choosing the *Wahlmänner* who composed this electoral agency, the voters in each subdistrict were divided at each election into three classes, one composed of those who paid the first third of direct taxes, a second of those who paid the next third, and still another of those who paid the remainder; and (3) the three classes, or groups, chose equal numbers of electors. Plenty of times, the first class consisted of only a single rich man; in any event, the first and second classes had electoral power out of all keeping with their relatively meager numbers.<sup>1</sup> Combined with the refusal of the conservative forces (as also in the case of the Reichstag) to permit redis-

<sup>1</sup> In 1908, the first class in all of the constituencies aggregated 293,000 voters; the second class, 1,065,240; the third class, 6,324,079, or 4, 14, and 82 per cent of the population, respectively.

tribution of seats,<sup>1</sup> this arrangement robbed the representative system of any proper claim to democracy, even if the legislature as a whole—enjoying little initiative, confronted with an absolute royal veto, and lacking means of controlling the executive—had possessed genuine power, which it certainly did not. It may be added that voting was at all stages not by secret ballot, but oral, and that whereas as many as three-fourths of the qualified electorate usually went to the polls in Reichstag elections, the turn-out at Prussian elections often did not exceed 30 per cent. All told, Prussia was the strongest obstacle which the democratic movement in Western and Central Europe encountered during the nineteenth and twentieth centuries.<sup>2</sup>

Progress on  
all lines ex-  
cept political

For forty years prior to the World War, Germany developed and prospered. Her population rose from forty to sixty-seven millions. Industry and trade grew on such a scale as to rival even the British. In the application of science to agriculture and manufacturing, she outdistanced the world. In Africa and the islands of the Pacific, she acquired an extensive and potentially valuable colonial empire. Her army knew no superior, and, starting with virtually no sea power at all, she built up one of the world's three principal navies. She pioneered in social legislation, and was known everywhere for the orderliness and efficiency of her public administration. Aspiring young scholars from all lands resorted to her universities; in music, literature, and other cultural achievement, she yielded to none. Germans were proud of their civilization, as they had a right to be; the world showered much admiration upon it. In one important respect, however, the country lagged. In an age in which popular government—or something approaching it—was ripening in most parts of the civilized world, Germany stood firmly by the autocratic and aristocratic political order carried over from an earlier era. For a decade or more previous to the revolutionary years 1848-49, she had indeed wavered between the traditional absolutism and the newer liberalism. For reasons that have been

<sup>1</sup> A reapportionment measure of 1906 made a few unimportant changes.

<sup>2</sup> The pre-war government of Prussia is described more fully in F. A. Ogg, *The Governments of Europe* (rev. ed.), Chap. xxxvi. Cf. A. L. Lowell, *Governments and Parties in Continental Europe*, I, Chap. vi; W. W. Willoughby, *Prussian Political Philosophy* (New York, 1918); and H. G. James, *Principles of Prussian Administration* (New York, 1913).

explained, the scale inclined against the democratic cause, and, as we have seen, the making of the new, united Germany fell to the ultra-conservative forces, *i.e.*, the Hohenzollern dynasty, and especially Bismarck, who had the organization, the political skill, and, above all, the military power, requisite for performing the task on lines favorable to their own interests. Once securely established—with merely some harmless concessions to democracy, chiefly in the form of the popularly elected Reichstag—the system was maintained against all attacks, until the military *débauche* in 1918, by a dynasty of divine-right monarchs, governing under the aegis of a peculiarly reactionary Prussian political philosophy, supported by a powerful landed aristocracy, equipped with the best-trained army in the world, and sustained by deep-seated habits of popular obedience.<sup>1</sup>

Plenty of Germans were ready to defend their political arrangements as leaving little to be desired. But plenty more had a different opinion. Attitudes on the subject were perhaps best reflected in the principles and programs of the several political parties. Of the latter, there were many—some of them local and of little importance, but at least five being of major significance. To begin with the most reactionary, the Conservatives found their leadership mainly among the great landholders of eastern Prussia, their voters among the agricultural wage-earners and public servants; and, being interested mainly in maintaining the disproportionate political power which the imperial-Prussian set-up, combined with antiquated electoral systems, gave them, they were prepared to resist every suggestion for constitutional or electoral change. Next to them stood a party, the Center, which, being founded and developed essentially as a Roman Catholic party, contained both aristocratic and popular elements, and was naturally strongest in the Catholic sections of the country, especially Bavaria, Silesia, and the Prussian Rhine provinces. Vigorously hostile toward socialism, the party nevertheless was guardedly liberal; indeed, it deliberately leaned as far as it dared in that direction with a view to attracting working-people who otherwise might go socialist. It had, however, no program of constitutional reform, and was often found acting with the Conservatives in a so-called "Blue-Black

Political  
parties and  
reform pro-  
grams to  
1914

<sup>1</sup> For a fuller analysis, see F. A. Ogg, *The Governments of Europe* (rev. ed.), Chap. xxxvii.

*bloc.*" Next stood the National Liberals, the party preëminently of the industrial leaders and managers, with a large middle-class following, particularly in the cities, where, of course, the middle class was principally to be found. Here we first encounter desire for political change—an extensive program, indeed, of political reform, embracing not only restriction of clerical influence in government and termination of aristocratic monopoly of civil and military office, but abolition of the Prussian three-class system, reapportionment of seats in the Reichstag, and an end of government interference with freedom of voting on the part of imperial and state employees. One step farther leftward, and we come to the Radicals, or Progressives, also largely middle-class and industrial, differing from the National Liberals chiefly in their insistence upon free trade, but also in the circumstance that to the National Liberal program of political reform they added the establishment of a thoroughgoing parliamentary system of government, with responsible ministers both in the Reich and in the states, combined with subordination of the military to the civil power.

Finally, we reach the only party of radical tendencies, the Social Democrats. Founded in 1869, and therefore having a history almost exactly coinciding in point of time with that of the Empire itself, this party of the workingman found little to commend in the governmental system of either Empire or states. No other party was so effectively organized; no other had so comprehensive, and yet definite, a program.<sup>1</sup> Much of this program had to do, of course, with economic matters, on Marxist lines. But it also envisaged sweeping changes of a political nature: suffrage for both men and women at the age of 20; proportional representation; biennial elections; popular initiative and referendum; an elective judiciary; decision by the Reichstag of all questions of peace and war; annual voting of all taxes; "self-government by the people in empire, state, province, and commune." There were those in the party who, impatient for revolution, deprecated political action. The bulk of both rank and file, however, took the more moderate and practical "revisionist" view that the goal could, and should, be reached only by this means, and were

<sup>1</sup> With but slight modifications, the party program continued until the war years to be that adopted by a party congress held at Erfurt in 1891, and commonly referred to as the Erfurt Program. For an English version, see S. P. Orth, *Socialism and Democracy in Europe* (New York, 1913), 298-301.

accordingly insistent upon achieving political democracy as a necessary step or stage. Most of the program, as we shall see—and much besides—won adoption in the new political order ushered in by the revolution of 1918.<sup>1</sup>

When the World War came on in 1914, discussion of constitutional matters largely ceased. With few exceptions, even the Social Democrats gave the government their support, voting for whatever appropriations and powers it demanded. As the contest progressed, however, without prospect of early or perhaps decisive termination, criticism reappeared. In 1916, Chancellor von Bethmann-Hollweg found it expedient to promise electoral reform in Prussia, although not until after the war. In 1917, growing war weariness, accentuated by effects of the entrance of the United States and of revolution in Russia, not only led the Center party to join the forces of reform, but influenced the Reichstag to set up a special committee on the subject and forced a series of changes of chancellors in a vain effort to stem the tide. In the same year, the radical wing of the Social Democratic party seceded, forming a new party, known as the Independent Socialists, which from the first was openly hostile to the government. By 1918, the nation's morale was running low. Strikes and other revolutionary manifestations were occurring on all hands; hope of a smashing victory in arms before America could raise, train, and transport any large number of troops was fading; the government's hollow promises and shifty evasions on the subject of constitutional reform was costing it the confidence and the support of increasing numbers of people. After the last great drives on the Western front failed to attain their objectives, the situation grew critical. Desperate efforts of the imperial authorities to hold things together did not prevent conviction from spreading among the armed forces and through the country that the war was lost; in September, the high command bluntly told the government that the army and navy could no longer be counted on and that no course was open except to seek an armistice.

Then was enacted a chapter strikingly reminiscent of that recorded in France some fifty years earlier when the Second Empire was faced with ruin—except that in the present instance the

War-time demand for political reform (1914-18)

<sup>1</sup> The parties of the imperial period are described more fully in F. A. Ogg, *The Governments of Europe* (rev. ed.), Chap. xxxvii, and F. Krüger, *Government and Politics of the German Empire*, Chap. xvii.



Failure of  
eleventh-  
hour conces-  
sions

eleventh-hour reforms designed to bolster up a tottering régime were decided upon and decreed in the brief space of six weeks instead of as many years. On September 30, the emperor proclaimed that thenceforth the people would have opportunity to "coöperate more effectively in deciding the policies of the Fatherland." On October 2, a new chancellor, Prince Maximilian of Baden, promised immediate electoral reform in Prussia, along with other changes. Already President Wilson had taken the position that peace could be negotiated only with a liberalized German government truly representing the German people, and in rapid-fire correspondence between Washington and Berlin during October it was made clear that this meant that Kaiserism must be repudiated in favor of some new and more liberal political system. In the effort to convince the president, and through him the Entente Powers, that the country was actually being democratized, announcements were made, constitutional amendments adopted, laws hastily enacted in bewildering succession. Responsibility of the chancellor and ministers to the Reichstag, transfer of substantial control over war and peace to the same body, reapportionment of Reichstag seats, proportional representation, suppression of the Prussian three-class system—these were only a few of the long list of reforms decreed: reforms which a few years previously would have met the demands of everybody except perhaps the left wing of the Social Democrats. But as matters now stood, they were not enough. Significant on their face though they were, said President Wilson, there was no guarantee either of their sincerity or of their permanence; and the only inference that could be drawn from his refusal to be impressed was that the old government would have to give way, root and branch, to a new one, in different hands, before he would talk peace on terms other than unconditional surrender.<sup>1</sup>

A republic  
proclaimed

With the German lines giving way at practically all points from the Swiss border to the sea, and with the Allies setting up the cry of "On to Berlin," demand arose on all sides that the emperor abdicate. Even the Social Democrats did not insist at this point upon a republic; they asked only that a regent be appointed who might be able to procure an armistice, to be followed by arrange-

<sup>1</sup> In the opinion of an eminent German scholar, Professor Herbert Kraus, there would have been no revolution in Germany at this time "had not the famous Wilson notes exerted the strongest influence in this direction." *The Crisis of German Democracy*, 40.

ments for a liberal monarchy with parliamentary institutions on the English model. Settlement on these lines might have been possible had there been revolution only from above. But there was revolution also from below. Hunger and privation, loss of confidence in the country's leaders, and, above all, unremitting activities of Bolshevist and other radical agitators, had done their work. Disaffection was rife in both the army and the navy; workers in munition plants and factories, railwaymen, and even agricultural workers, were ready for revolt. Striving manfully to hold things together, Prince Maximilian planned a national assembly to frame a new constitution, and also talked hopefully of a final desperate rising of the nation in case the Allies' terms proved impossible. But events moved too swiftly. On November 4-5, a long-brewing naval mutiny broke out at Kiel; three days later, Bavaria was swept by revolution and a republic proclaimed; two days more, and most of the important cities of the west and center, including Berlin itself, succumbed. On all sides, workers' and soldiers' councils, on the Russian model, sprang into being, pushing the constitutional authorities aside and seizing provisional control of affairs. For days the distracted chancellor, confronted with complete collapse of both the imperial and Prussian governments, tried by every conceivable argument to induce the emperor to abdicate. Only when assured by his generals that he could no longer count upon the army did the humbled Hohenzollern give a qualified consent and allow himself to be hustled across the frontier into Holland; not until November 28 did he sign a formal act of abdication. But meanwhile, on November 9, the plan of abdication was announced as to all intents and purposes effective, and with it a renunciation of the succession by the crown prince and of the chancellorship, too, by the last surviving effective authority of the old régime, "Prince Max."<sup>1</sup>

Recognizing that the Social Democrats were the logical people to take the helm, the retiring chancellor handed over *de facto* authority to their principal leader, a former saddle-maker of Heidelberg, Friedrich Ebert, who by a sort of legal fiction became both chancellor and regent. Of a regency, however, there was no need, for nothing short of a republic would now meet the popular

The Social  
Democrats at  
the helm

<sup>1</sup> All of the old state governments collapsed at about this same time. Princes renounced their thrones and republican governments under provisional councils were set up.

demand; and the chancellorship, as such, was regarded by Ebert himself as having evaporated in his hands within a few hours. Associating with himself two other Majority Socialist leaders and three prominent Independent Socialists, Ebert forthwith brought into being a provisional government of "peoples' commissars" which, on the evening of this same red-letter day, November 9, issued a rallying proclamation as follows: "Comrades: This day has completed the freeing of the people. The emperor has abdicated, his eldest son has renounced the throne. The Social Democratic party has taken over the government, and has offered entry into the government to the Independent Social Democratic party on the basis of complete equality. The new government will arrange for an election of a constituent national assembly, in which all citizens of either sex who are over 20 years of age will take part with absolutely equal rights. After that, it will resign its power into the hands of the new representatives of the people."<sup>1</sup> After clamoring vainly for a generation for some substantial share in the control of public policy, Germany's Social Democrats suddenly found themselves in possession of all the power there was—involuntary custodians of a storm-tossed nation's destiny. A revolution they must carry through, not so much because they desired to do so as because they knew that unless they proclaimed it as an accomplished fact, control would speedily pass out of their hands into those of the extremists on their left.<sup>2</sup>

<sup>1</sup> "The German Revolution," *Internat. Conciliation*, No. 137, p. 543, Apr., 1919.

<sup>2</sup> G. D. H. and M. Cole, *op. cit.*, 116. Reform movements during the war, and the revolution at the close, are treated more fully in M. W. Graham, *New Governments of Central Europe* (New York, 1924), Chaps. i, iii; J. Mattern, *Principles of the Constitutional Jurisprudence of the German National Republic* (Baltimore, 1928), 65-96; R. H. Lutz, *The German Revolution, 1918-1919* (Stanford Univ., 1922); E. Bevan, *German Social Democracy During the War* (New York, 1919); and H. G. Daniels, *The Rise of the German Republic* (London, 1927). German accounts include H. Strobel (Independent Socialist), *The German Revolution and After*, trans. by J. H. Stenning (London, 1923); H. Delbrück, *Government and the Will of the People*, trans. by R. S. MacElwell (New York, 1923); and A. Rosenberg, *The Birth of the German Republic*, trans. by I. F. D. Morrow (New York, 1931). E. Bernstein, *Die deutsche Revolution* (Berlin, 1921), I, is an excellent account of events from early November, 1918, to the election of the Weimar Assembly, by an active Socialist participant. Other first-hand accounts are P. Scheidemann, *The Making of New Germany*, trans. by J. E. Michell, 2 vols. (New York, 1929), and Prince Maximilian of Baden, *Memoirs*, trans. by W. M. Calder and C. W. H. Sutton, 2 vols. (New York, 1928). The principal collection of documents is R. H. Lutz, *The Fall of the German Empire*, 2 vols. (Stanford Univ., 1932).

## CHAPTER XXXI

### THE REPUBLICAN CONSTITUTIONAL SYSTEM

The old régime was palpably a thing of the past. Monarchy was gone—for the time being at all events—in nation and in states. A Bundesrat, with newly commissioned members representing the republics, lingered as an administrative agency, but was not the Bundesrat of yore; besides, it soon disappeared. The president of the Reichstag tried twice to call the members of that body together, but succeeded only in provoking a decree of dissolution. Imperial and state constitutions became dead letters; nowhere was there authority except in revolutionary hands. In a situation such as this, what next? No man could foresee, and for months the world waited anxiously. Indeed, developments since 1929 have been such that the world is *still* waiting to see what the ultimate outcome will be. At the end of 1918, the only indications were such as could be gleaned from scrutinizing the political forces then struggling for mastery.

Four main possibilities disclosed themselves. The first was a monarchist reaction. The circumstances under which the Hohenzollerns had fallen made it altogether unlikely that that particular dynasty would ever come back. Some other princely house might, however, win acceptance in its stead—most probably the rather popular Wittelsbach family formerly ruling in Bavaria. After all, the German people as a whole had unquestionably been monarchist at heart; even the Social Democrats had never put a republican plank in their otherwise liberal political platform. Furthermore, not only was the once powerful Conservative party (hastily rechristened the German National People's party) still undisguisedly in favor of continuing monarchy, but there were plenty of unconverted monarchists in the ranks of at least two other major parties, the Center and the National Liberals, now also bearing the new names of Christian People's and People's party, respectively. Continued internal disorder, coupled with the country's need for a strong executive in the face of a hostile world, undoubtedly might produce a swing

The way open for a new political order

Possibilities of the situation:

A monarchist reaction

back to monarchy, in both nation and states; in which event, the degree to which the liberalizing reforms of 1918 would survive would be problematical.

2. A new régime on Majority Socialist lines

A second possibility was that a new régime would be organized under the leadership and control principally of the Majority Socialists. This would mean perpetuation of the new-born republic, introduction of thoroughgoing democracy, and presumably a broad program of socialization. It would not, however, mean actual radicalism in any great degree. In opposing the old order, the Social Democrats had been forced into a position which, by contrast, appeared somewhat extreme. Those of them now identified with the Majority wing comprised people, however, who for the most part would in a country like England have been regarded merely as liberals. They had not wanted revolution, and had tried to avert it, having been put in power by it, they were now bent upon keeping it in bounds. For them, the first great task was to stabilize the Republic and provide it with a popular, liberal form of government. After that, economic and social reconstruction, including nationalization of the instrumentalities of production and distribution, should be undertaken, but only gradually, and on purely pacific and evolutionary lines.

3. Immediate economic revolution as favored by Independent Socialists

A third course to which the situation might lead would be one marked out by the Independent Socialists. It would be considerably more revolutionary. Though seeming at times to lean strongly to communism, the Independents were not, as a party, favorable to anything like a dictatorship of the proletariat. Nevertheless, they had little patience with the moderate ideas and cautious strategy of the majority element, and were above all out of sympathy with the purpose to make political reorganization antecedent to socialization. They would let such matters as adopting a new constitution go over to a later time, and would meanwhile proceed at once with economic and social reconstruction.

4. A Spartacist triumph

A final possibility was that the most radical element of all, the Communists (generally known in this period as the "Spartacists"<sup>1</sup>) would come into control—in which case Germany would definitely go the way of Russia. Incited by tireless Bolshevik propaganda, and recruited from the Independent Socialists and other extremer groups, the Spartacists scorned parliamentary

<sup>1</sup> From the gladiator Spartacus who led a servile revolt at Rome in 73-71 B.C.

government, majority rule, and other "bourgeois" devices. Through their newspaper, the *Red Flag*, and inflammatory manifestoes they called upon the workers of all lands to settle once for all with capitalism, and were bent upon making a good job of it in their own country, their objective being nothing less than the establishment of a soviet system on the Russian pattern, grounded, of course, upon a dictatorship of the proletariat. Direct action—not haggling over the instruments of political democracy—was to usher in the new era, with the general strike as the favorite means of forcing results.

Although the profoundest issue was between the idea of democracy and that of sovietism, the probabilities of the situation lay with the second and third of the possible courses that have been indicated. Monarchist reaction might eventually come (in days nearer our own, it has sometimes seemed imminent), but hardly until other programs had been tried and had failed. On the other hand, the Spartacists, while for a time in control of Munich and other centers, and while long continuing a highly disturbing factor in the situation, proved unable to get a grip upon the country as a whole, and seemed reasonably certain never to be able to break down the attachment of the average German to the things which bolshevism would destroy. As between the two programs of organized socialism, a real choice, however, had to be made. Should emphasis be placed upon the completion of the political revolution, the making of a new constitution, and the reorganization of administration, letting the social and economic revolution go over for gradual realization at a later time? Or should the social revolution come first? Chancellor Ebert and his Majority supporters favored the first plan; Haase and the more radical elements favored the second; and when it became apparent that the Majority policy was to prevail, Haase and his fellow-partisans withdrew (in December, 1918) from the provisional government.<sup>1</sup>

Meanwhile, preparations went forward for convoking a national assembly to frame a constitution. Such a step had been promised by the provisional government when assuming power, and almost simultaneously a proclamation had announced that

Probabilities

Electing an assembly to frame a constitution

<sup>1</sup> The immediate circumstance that produced the break was the provisional government's bloody suppression, on Christmas eve, 1918, of a Spartacist uprising in Berlin.

thenceforth all elections would be carried out on the basis of equal, direct, and universal suffrage for both men and women 20 years of age and over, by secret ballot, and according to the list system of proportional representation. Promptly, too, an electoral law on these lines, drafted by the Secretary of the Interior and later "father" of the republican constitution, Dr. Hugo Preuss, had been put in readiness.<sup>1</sup> Having maneuvered enough of its supporters into the Central Workers' and Soldiers' Council (main organ of the forces striving for immediate social revolution) to swing it over to the plan, the provisional government, ten days before the withdrawal of the Independents, fixed Sunday, January 19, 1919, as the date for electing the constituent assembly; and on that momentous day of inquest the nation's will was registered. Throughout a country flooded with pamphlets and plastered with posters, the campaign leading up to the balloting aroused tremendous interest; and notwithstanding Spartacist efforts to break up the entire undertaking, over 82 per cent of the qualified voters, including soldiers still with the colors and prisoners of war returning from captivity, went to the polls. The elections were fair and orderly, and a total of 421 delegates were duly chosen from 37 large electoral districts into which the country had been newly divided for the purpose.<sup>2</sup>

The Constituent Assembly and its political complexion

Contemplation of the personnel of the new body revealed a number of significant facts. In the first place, most of the leaders in the old Reichstag reappeared, and along with them, a large proportion of the rank and file as well. These people, together with additional persons connected with public affairs and business, assured the Assembly a goodly amount of knowledge and experience, and it was generally considered that the level of ability was exceptionally high. Lawyers, journalists, and trade union officials were especially in evidence. Of interest, too, was the presence of no fewer than 36 women, most of them Socialists.<sup>3</sup>

<sup>1</sup> The text of the law (dated November 30, 1918) is printed in the *Reichsgesetzblatt*, No. 167, pp. 1345 ff.

<sup>2</sup> The original plan to hold elections in a 38th district, consisting of Alsace-Lorraine—clearly predestined to pass into French hands—was abandoned.

<sup>3</sup> Among prominent members were: Düringer and von Delbrück (National People's party); Stresemann (People's party); Fehrenbach—who presided over the Assembly—Erzberger, and Beyerle (Christian People's party); Preuss, Haussmann, Naumann, and Dernburg (Democratic party); Scheidemann, Bauer, Müller, Legien, Wissel, Noske, David, and Sinzheimer (Majority Socialists); and Haase and Cohn (Independent Socialists).

More significant than anything else was, naturally, the Assembly's political complexion; for by this chiefly would be determined the direction in which the new republic's political development would be pointed. In a body by all odds more broadly representative than any previous political gathering in the country's history, every party of any consequence had spokesmen save only one, the Spartacists. Having eschewed political methods, these extremists, putting up no candidates, had had nothing to do with the elections except to hamper them in such ways as they could. As for the rest, the popular votes polled and seats won (disregarding various minor groups) were as follows:

PARTY	NO OF VOTES	PER CENT OF TOTAL VOTES CAST	NO OF SEATS
Majority Socialists.....	11,130,452	38.7	163
Christian People's party....	5,686,104	19.7	88
Democratic party....	5,261,187	18.3	75
National People's party.....	2,408,387	8.4	42
Independent Socialists..	2,187,305	7.6	22
People's party..	1,473,975	5.1	21

The make-up of the electorate was so different and the apportionment of seats so changed that comparison of these figures with the statistics of the last Reichstag election held under the imperial régime (in 1912) is hardly worth while. Without being able to measure it precisely, one is warranted, however, in concluding that there had been a considerable shift toward the left. The National People's party had but 10 per cent of the seats in the new body, whereas its predecessor, the Conservative party, had 17.9 per cent of those in the former one. On the other hand, the two socialist parties controlled 43.9 per cent of the seats in the present assembly, as compared with a Social Democratic quota of only 30.3 per cent in the earlier one.<sup>1</sup> The matter of chief significance, however, was that, with the Spartacists absent, the Independent Socialists in a small minority, and the ultra-conservative or reactionary forces not formidable, the Assembly was foreordained to be dominated by men and women who would favor proceeding with political reorganization on liberal and moderate lines, to the exclusion of anything resembling sovietism

<sup>1</sup> Of course they would have had decidedly more seats in the Reichstag under an electoral system like that of 1919.



on the one hand or reactionism on the other. With a heavy plurality (although a good deal less than a majority), the Majority Socialists would certainly lead. They, however, could not go far without the support of one or more of the non-socialistic parties; and this was an additional guarantee of compromise and moderation.

Some questions

Once before—to be exact, 71 years in the past—a great nationwide popularly-elected assembly had addressed itself to the making of a liberal constitution for a revolutionary Germany. The Frankfort Assembly had failed, and for two generations the country had travelled the road of political illiberalism and reaction. Now that the nation had again been brought, swiftly and unexpectedly, to a pinnacle of opportunity, would the efforts of its reformers be more successful? And if initially so, would victory endure? Would the people—the question can be asked now, though hardly envisaged in 1919—escape from monarchist regimentation only to find themselves encased in a strait-jacket of Fascist manufacture?

The provisional government regularized and expanded

Notwithstanding widespread public disorder, the Assembly (known officially as the *Deutsche Verfassungsgebende Nationalversammlung*) met promptly on the scheduled date, February 6, at Weimar.<sup>1</sup> There was a good attendance, and the work in hand was entered upon with orderliness and dispatch. The rules of procedure in force in the late Reichstag were adopted; officers were elected, revealing a significant tendency of the Majority Socialists, the Christian People's party, and the Democrats to work together; and with a view to tiding over the period until a permanent constitution could be prepared and put into operation, a provisional organic law, forming in effect a temporary constitution, was passed in four days' time, regularizing and expanding the provisional government and defining its relations with the Assembly itself. In association with a chancellor, the commissars—thenceforth to be known as ministers—were to continue as the supreme executive power. But a president of the Republic was to be chosen by the Assembly, he in turn

<sup>1</sup> This place, the capital of the little grand-duchy of Saxe-Weimar-Eisenach, was selected partly because of its association with the best traditions of German liberalism, as represented by Goethe and Schiller, and partly in deference to the desire of the south Germans that the convention should not be held in Prussia. The provisional government, furthermore, wished to shield the gathering from the disorders to which Berlin was constantly exposed.

naming the ministers; and the ministers were to be responsible to the Assembly. In initiating legislative measures for consideration and adoption by the Assembly, the chancellor and ministers were to have the advice of a "committee of the states," consisting of one or more representatives of all German states having a popular form of government. Officially, these arrangements were for the time being only; in point of fact, they foreshadowed (as they were intended to do) various major features of the system about to be written into the definitive constitution. In pursuance of them, Chancellor Ebert was forthwith elected president of the Republic; another prominent Majority Socialist, Philipp Scheidemann, assumed the chancellorship and formed a ministry containing not only Majority Socialists but representatives of the Christian People's party and the Democrats; while the Assembly itself settled into the position of a national parliament, exercising—quite in addition to its work on the constitution—all of the powers commonly associated with such bodies under democratic systems of government.<sup>1</sup>

Having converted the purely revolutionary government of Chancellor Ebert into a temporary cabinet government responsible to a popularly chosen body, the Assembly proceeded to its primary task of framing a permanent republican constitution. Students of American constitutional history will recall how greatly the work of the Philadelphia convention of 1787 was expedited by the submission by Edmund Randolph, in behalf of his state's delegation, of the Virginia plan, affording the convention at the very beginning a series of concrete proposals upon which to concentrate attention. The same rôle was played at Weimar by a constitutional draft prepared in advance by a committee created by the provisional government and presided over by the indefatigable Democrat, Dr. Preuss.<sup>2</sup> The Preuss

The constitution made and promulgated

<sup>1</sup> As has appeared, the French National Assembly of 1871 functioned in much the same way (see p. 458 above). Although not elected for the purpose of making a constitution, it eventually performed that task; and in the meantime—some four years in this instance, as compared with less than six months in the case of the German assembly—it, like the Weimar gathering, served as the country's principal organ of government.

<sup>2</sup> Preuss, being a Jew, had never attained a university professorship. He was, however, a professor of public law in the Berlin Handels-hochschule (Commercial High School), a well-known writer on municipal government, and an accomplished student of constitutional matters. Among his favorite reference books were Bryce's *American Commonwealth*, Lowell's *Government of England*, and Redlich's *Procedure*

plan was not adopted by the Assembly in all of its major features; its proposal for the dismemberment of Prussia, for example, did not prevail. It nevertheless afforded an excellent starting point for debate, and Preuss himself has ever since been rightly regarded as the chief architect of the new fundamental law.

As was to be expected, much criticism fell upon the Assembly as its work progressed. Moving too slowly to please some, too rapidly to please others, it labored under handicaps not the least of which was a prevalent disposition to expect it to accomplish more than was humanly possible. The ultra-radical elements professed to see in it and in the temporary government which it had set up the instrumentalities of reaction. Losing their initial enthusiasm, considerable sections of the people became indifferent to its efforts, or grew skeptical as to their success. Disregarding strictures from without, however, and overcoming a tendency to prolixity such as had destroyed the usefulness of the Frankfort convention of 1848, it pushed its deliberations to a conclusion quite as rapidly as the gravity of its task permitted. The proposed instrument was discussed on first reading in February and early March, in committee from March to June, and on second and third readings during July. On July 31—three weeks after the Assembly had performed another important but less agreeable function in ratifying the treaty of Versailles—the permanent constitution was finally adopted, by a vote of 262 to 75, the opposition coming chiefly from the National People's party and the People's party, at one extreme, and the Independent Socialists at the other.

Notwithstanding that the instrument envisaged extensive later use of the popular initiative and referendum, the Assembly took no action to refer it to a popular vote, or to procure for it any other form of ratification.<sup>1</sup> Accordingly, once approved at

*of the House of Commons.* After the constitution was made, he wrote voluminously upon it; indeed, as an interpretation of a new instrument of government by one who had borne a leading share in framing it, his books—such as *Deutschlands republikanische Reichsverfassung* (2nd ed., Berlin, 1921) and *Staat, Recht, und Freiheit* (Tübingen, 1926)—are worthy of being compared with the *Federalist* of Hamilton, Madison, and Jay, and with Ito's famous *Commentaries* on the constitution of Japan.

<sup>1</sup> There was no criticism on this score, the Assembly being considered so completely representative that the people were to be regarded as speaking directly through its acts. In point of fact, none of the new post-war European constitutions was submitted to a popular vote save only that of the German *Land* of Baden.

Weimar, the constitution was ready to be promulgated; and this step was duly taken, by presidential proclamation, on August 11. The procedure was thus the same as in the case of the French constitution of 1875; and, as in that instance too, promulgation of the new instrument entailed no immediate changes in the government as actually operating. Ebert took the oath of office on the new basis; the existing ministry went on unaffected; the Assembly, pending the election of the first republican Reichstag, continued in the rôle of a national parliament, moving from Weimar to Berlin in September, and disbanding only in June of the following year. During the interval, the body passed not only numerous laws required for the full carrying out of the constitution, *e.g.*, as to the election of the Reichstag and of the president, but also many financial and other measures of a statutory nature of which the country stood in need.

New constitutions of the post-war period in Europe tended generally to fullness, and the first thing that strikes one about the German instrument is its sheer bulk.<sup>1</sup> Aside from one or two newer state constitutions in the United States, the world had never, up to 1919, seen a longer one. At the beginning is a well-worded preamble; at the end, a group of 16 "transitional and concluding articles." Between lie two vast stretches of constitutional matter: Part I, in seven chapters and 108 articles, dealing with the "structure and functions of the Reich"; Part II, in five chapters and 57 articles, devoted to the "fundamental rights and duties of Germans." Experience indicates that constitutions can easily be overdone in the matter of content; great comprehensiveness and detail usually result in serious obstacles to efficient government. It is not difficult to see, however, why a lengthy document should have come from the hands of the Weimar Assembly. The system provided for, if not truly federal,<sup>2</sup> nevertheless involved novel and complicated arrangements as between nation and *Länder*, or states; and these seemed to require definition in considerable detail. Makers of constitutions for federal or quasi-federal governments nowadays, noting the

The constitution's characteristics

<sup>1</sup> Translated texts of most of these constitutions will be found in H. L. McBain and L. Rogers, *The New Constitutions of Europe* (Garden City, 1922). Cf. A. J. Zurcher, *The Experiment with Democracy in Central Europe* (New York, 1933), Chap. i, and A. Headlam-Morley, *The New Democratic Constitutions of Europe* (London, 1926), Chap. ii.

<sup>2</sup> See p. 691 below.

trouble that uncertainty about division of powers has caused in the United States, usually seek to cover the matter from every angle.<sup>1</sup> In the second place, in their enthusiasm over the long-awaited opportunity to write their views into the country's fundamental law, the reform elements—particularly the Social Democrats—naturally were prone to try to put into the constitution everything that they wanted to see provided for, thereby, so to speak, nailing their program down. In the third place, the constitution was a product of many compromises, not the least of which was a concession to the more radical forces which eventuated in placing in the fundamental law considerable sections, *e.g.*, those relating to economic councils, which otherwise would hardly have found lodgment there.

Further characteristics flow, at least in part, from these same circumstances. The constitution runs on economic, almost as much as on political, lines. Many subjects commonly left largely or wholly for regulation by ordinary law are here covered in detail; for example, no fewer than nine articles deal with the single matter of railways. The status of the individual citizen is nowhere else treated with equal comprehensiveness. On the other hand, agreement on many matters could be carried only to a certain point, with the result that provisions on a subject sometimes start off with assurance, only to come to a sudden stop or evaporate in more or less meaningless generalities. Because, furthermore, of lack of immediate information, as well as because of inability to agree, numerous subjects were expressly—no doubt sometimes fortunately—earmarked for later regulation by ordinary law. And many of the rights guaranteed were explicitly made subject to curtailment as later law should provide or direct.

#### Sources

The sources from which the constitution's architects drew were many. To some extent, they were foreign—chiefly French, Swiss, and American. Far more largely, however, they were German. First of all, there was the constitution of the collapsed Empire. From this was salvaged whatever seemed appropriate, and here and there the old phraseology reappears substantially unchanged; even the name for the country in its political aspect, *i.e.*, *Reich*, although literally denoting "empire," was preserved.

<sup>1</sup> That the Weimar "fathers" were not notably successful in averting doubts is indicated by the fact that there has ever since been warm debate as to whether or not the new system was federal.

Two other great German documents, however, contributed heavily. One was the ill-fated but now more than ever pertinent and suggestive constitution drawn up at Frankfort in 1848. The other was the more recent but equally historic platform of the Social Democratic party, the Erfurt Program of 1891. German liberalism, in its hour of opportunity, was fortunate in having resources of such richness—apart from those sprung more directly from war-time experience—upon which to draw.<sup>1</sup>

The constitution of imperial days could be amended in exactly the same manner in which ordinary laws were enacted, *i.e.*, by simple majority vote in the Bundesrat and Reichstag, save for the limitation that any amendment was regarded as rejected if as many as 14 votes were cast against it in the Bundesrat. For amending the republican constitution, no fewer than four procedures were provided in the instrument, as follows: (1) a two-thirds vote in both Reichstag and Reichsrat; (2) a two-thirds vote in the Reichstag alone, provided that the Reichsrat, in disagreeing, did not within two weeks demand that the amendment be referred to the people; (3) a two-thirds vote in the Reichstag, followed by approval by the people, in case the Reichsrat called for a referendum; and (4) popular initiative, followed by a referendum and adoption of the proposal by majority vote.<sup>2</sup> Joining, as it did, the initiative and referendum with action by the legislative bodies, the amending process bore closer resemblance to that of Switzerland than to any other in Western Europe, although there is the important difference, that in the lesser republic no amendment can be finally adopted without a vote by the people. Unlike the situation under the Empire, no single state could by a determinate act permanently block a proposed amendment. Prussia, to be sure, had more than enough votes in both Reichstag and Reichsrat to prevent a proposal from being passed in either body by a two-thirds vote. But, in the first place, there was no constitutional require-

<sup>1</sup> The German text of the constitution will be found in many places, *e.g.*, G. Anschütz, *Die Verfassung des deutschen Reichs vom 11. August 1919* (Berlin, 1930), pp. xi-xxxvii, and F. F. M. von Bieberstein, *Verfassungsrechtliche Reichsgesetze und Wichtige Verordnungen* (Mannheim, 1929), 3-81. Convenient English translations appear in H. Kraus, *The Crisis of German Democracy*, 179-216, and H. L. McBain and L. Rogers, *New Constitutions of Europe*, 176-212.

<sup>2</sup> Art. 76. The constitution left the processes of initiative and referendum to be regulated by national law, and a measure on the subject was later enacted by the Constituent Assembly. See pp. 750-753 below.

ment similar to the old one under which Prussia's (and every other state's) votes in the Bundesrat were cast in an indivisible block under a single mandate. In the second place, rejection of an amendment in the Reichstag, such as the concentration of all Prussian votes on the same side of a question might conceivably bring about, could at most have no effect beyond compelling the proposal to be submitted to the people. Finally, there was nothing to prevent any proposal, if blocked in the Reichstag, from being taken up by the electorate and adopted by its own independent action.

Earlier  
amendments  
and later  
suspensions

Manifestly, the constitution's makers intended that the nation should find no difficulty in revising its fundamental law whenever it chose; and during the decade 1919-28 several amendments were adopted, commonly by vote of the Reichstag with or without concurrence of the Reichsrat. Thus in 1920, laws passed in the form of constitutional amendments consolidated a number of smaller areas to form a new *Land*, or state, of Thuringia, and also joined Coburg to Bavaria. In 1921, an amendment made important changes in the representation of the *Länder* in the Reichsrat.<sup>1</sup> In 1926, another one extended parliamentary immunities to members of Reichstag committees during intersessional and interparliamentary periods. At no point, however, were the fundamentals of the governmental system touched until the stormy period of the Hitlerian dictatorship; and even then the astounding things that happened were made possible more largely by ignoring the constitution—at all events, by simply suspending its provisions on one subject after another—than by formally amending it. Even when, during the troubled years 1930-32, parliamentary government was largely in abeyance, the measures employed did not alter the form of the fundamental law, and indeed were not on their face contrary to it. Rather, they were in pursuance of the instrument's famous Article 48, conferring quasi-dictatorial powers upon the president of the Republic in given situations.<sup>2</sup> Again when, in March, 1933—two months after Hitler became chancellor—the Reichstag and Reichsrat enacted (in a measure “to combat the national crisis”) that up to April 1, 1937, national laws might be made “by the national cabinet as well as

<sup>1</sup> See p. 747 below.

<sup>2</sup> See pp. 709-713 below.

in accordance with the procedure established in the constitution," and that the laws so enacted might "deviate from the constitution" in so far as they did not affect the position of the Reichstag and Reichsrat,"<sup>1</sup> the constitution was not technically amended, but rather simply pushed aside for a period in respect to those of its provisions which undertook to specify the ways in which laws should be made. Laws and decrees emanating from the chancellor and cabinet followed in bewildering succession, imposing regulations and effecting changes without reference to constitutional provisions and limitations. Again, such of these as were at variance with constitutional stipulations did not usually in form embody constitutional amendments; rather, they—or at all events some of them—were the raw materials from which it was proposed, if all went well, eventually to fabricate a new and different constitution for a "Third Reich."

The situation, therefore, when the present lines were written (February, 1934) was, in brief: (1) the Weimar written constitution had not been completely and overtly abrogated; (2) its provisions were to be regarded as still operative in so far as the Hitler government had not seen fit to issue laws or decrees inconsistent with them; (3) no feature or provision of it was, however, secure against arbitrary suspension at any moment; and (4) the objective of the ruling dictatorship was not a meticulously amended Weimar constitution, but a new frame of government conceived on entirely different lines and ostentatiously free from all connection with the handiwork of the detested "Weimar coalition."<sup>2</sup>

Aside from a guarantee of equal treatment for natives and non-natives in every German state, and of equal protection for all as against foreign states,<sup>3</sup> the constitution of the Empire was virtually silent on the status of the individual citizen or subject; certainly it contained nothing in the nature of a bill of rights. This does not mean that the German citizen before 1919 had no legally recognized rights. On the contrary, he had under state, and especially under imperial law, so long a list of well-established rights that a leading German jurist once ventured the

"Fundamental rights and duties"

<sup>1</sup> For text, see J. K. Pollock and H. J. Heneman, *The Hitler Decrees* (Ann Arbor, Mich., 1934), 13-14.

<sup>2</sup> The promulgation of a new written constitution, when ready, was authorized by a solidly National Socialist Reichstag on January 30, 1934.

<sup>3</sup> Art. 3.



opinion that these rights were even more extensive than in many states in which rights were constitutionally catalogued.<sup>1</sup> For this reason, the Weimar constitution's remarkably full enumeration of fundamental rights, although regarded by Germans as their own most important contribution to the new order, is less significant—certainly less of an innovation—than has sometimes been supposed. It nevertheless challenges attention on a number of grounds.

The entire second part of the constitution is, indeed, devoted to "fundamental rights and duties"—42 articles to what may be regarded as a bill of rights in the usual sense, and 15 more to provisions on the special subject of "economic life." In view of such elaborateness, it is interesting to observe that there was much difference of opinion at Weimar upon the desirability of including general provisions on private rights at all. In its first form, this portion of the instrument was comparatively brief; Dr. Preuss favored omitting it altogether. The great body of German law under which rights had up to now been protected was expected to continue largely intact; and, recalling that the constitution of 1848 had fallen to the ground partly because of being overweighted with controversial provisions of the kind, Preuss and others considered that it would jeopardize no essential interests, and would be more expedient, to put little or nothing on the subject into the new instrument. Some delegates, however, wanted to go even beyond the lengths eventually reached, and the upshot was—by compromise, as usual—the insertion of a series of provisions which for sheer number and detail exceed anything of the sort to be found in any earlier constitution.

Emphasis on  
social aspects

Like French and American declarations or bills of rights, Part II of the Weimar constitution starts off with an imposing list of rights of the individual—equality before the law, liberty of travel and domicile, freedom of person, freedom of speech.<sup>2</sup>

<sup>1</sup> Georg Jellinek, *Menschen und Bürgerrechte*, 7.

<sup>2</sup> The provision is that all "Germans" are equal before the law, etc. Beyond providing (a) that "every citizen of a *Land* is at the same time a citizen of the Reich," and (b) that citizenship of the Reich and the *Länder* is "acquired and lost in accordance with the provisions of a Reich law" (Art. 110), the constitution did not attempt to deal with the thorny subject of citizenship. An imperial nationality law of 1913, giving precedence to state citizenship over Reich citizenship remained in force, and as a result Germans continued under the Republic to be citizens primarily of Prussia, Bavaria, Baden, or other *Länder*, even though, under Article 110

But whereas bills of rights elsewhere usually did not go far beyond seeking to protect the individual, as a separate entity in the body politic, the Weimar constitution quickly advanced to an even more arresting enumeration of rights, guarantees, and maxims pertaining to people in groups. The instrument contains less than might have been expected that is *socialistic*, but it abounds in provisions that are *social*. The "great state," as envisaged, is no mere aggregation of individuals, but rather a compact, closely integrated body of people, and the supreme objective is not the maximum of individual freedom but the highest realization of community and national well-being. Hence we find a lengthy series of provisions concerning "community life"; another concerning religion and religious associations; still another on the subject of education and schools. Intermingled with stipulations in these sections concerning group interests and activities are further guarantees to the individual—freedom of petition and of political opinion, eligibility to public office, religious liberty. But the emphasis throughout is social; and duties—rendering personal services to the state and the municipality, contributing to the financial support of all public burdens, military service—are everywhere bracketed with rights.

The weight to be attributed to many of the provisions was, it must be conceded, doubtful even before developments under the Hitler régime gave most of them an appearance of sheer irony. To begin with, one found, over and over, this sort of thing: "Every German's house is his sanctuary, and is inviolable. Exceptions may be made only as provided by law." That is to say, broad acknowledgment of a general right was immediately followed by provision for curtailing or abrogating quoted above, by being such they automatically became Reich citizens as well. The arrangement was not entirely satisfactory, and jurists generally agreed in advocating new legislation putting Reich citizenship first and making state citizenship secondary. Under the Nazi régime dating from 1933, the problem bids fair to solve itself by the virtual or complete extinction of the *Länder*. Further lines on which citizenship is to be regulated if the régime continues are suggested in the fourth of the 25-point program of the National Socialist party, reading as follows: "Only those who are members of the nation can be citizens. Only those who are of German blood . . . can be members of the German nation. No Jew can, therefore, be a member of the German nation." The history of national and state citizenship in the United States affords interesting comparison with German experience. See W. W. Willoughby, *Constitutional Law of the United States* (2nd ed., New York, 1929), I, Chap. xvii.

Constitutional and practical limitations

the right by Reich, and often (as in the case cited) by either Reich or state law. Rights under most constitutions, including those of our own country, are commonly subject to curtailment under certain conditions, *e.g.*, in war-time. But the unusual extent to which the Weimar constitution gives with one hand and takes away with the other imparts to the entire instrument, as a leading German constitutional lawyer has admitted, "a rather equivocal character." In the second place, this portion of the constitution, taken as a whole, is a strange *mélange* of political precepts, economic theories, and legal commands. Much of it, in the opinion of a majority of German lawyers, is of such character as to have (even under normal governmental conditions) no legal value whatever. There are provisions so phrased and so articulated with existing facts as unmistakably to be of the nature of law, abrogating all contradictory provisions of antecedent laws. There are others which merely indicate the course that should be followed in the regulation of given matters, abrogating nothing, but charting out lines that in the opinion of the constitution's makers ought to be followed in the future. There are still others which do not go beyond declaring general truths—frequently very ordinary philosophico-legal commonplaces at that—or recording good intentions. The actual or potential suspension of multifold constitutional provisions in the stormy year 1933 had the result, of course, of throwing all guarantees, even those most clearly of the nature of law, into an extremely uncertain position. Indeed, the measures pursued in dealing with Jewish and Communist elements of the population showed that, for them at all events, guarantees were not worth the paper on which they were written.<sup>1</sup>

The "economic constitution"

The program of the Social Democracy had always emphasized economic even more than political matters, and it was to be expected that the Weimar constitution, in common with post-

<sup>1</sup> Shortly after Hitler's accession to the chancellorship, an extraordinarily plain-spoken decree suspended nearly all of the more important guarantees "until further notice," which has never been given. "Consequently," we read, "restrictions of personal liberty, of the right of the free expression of opinion, including freedom of the press, of association, and of assembly, interference with letters, mail, telegraph, and telephone secrets, orders to search houses, and to confiscate as well as restrict property beyond existing legal limits, are permissible." J. K. Pollock and H. J. Heneman, *The Hitler Decrees*, 10. Cf. the laws for the confiscation of Communist property and of the property of alien enemies (May and July) and the press law (Oct.). *Ibid.*, 29-36.

war constitutions generally, would contain much on such subjects. Starting with the fundamental concept that a supreme function of the state is to assure the social and economic well-being of the individual and the economic prosperity of the people as a whole, the document first lays down certain broad principles, *e.g.*, economic liberty of the individual, freedom of trade and commerce, freedom of contract, and then devotes itself chiefly to three matters: property and its socialization, the status of labor, and a scheme for workers' and economic councils. Evidence of the essential moderateness of the constitution is supplied by the fact that, although colored by socialist ideology, it definitely recognizes and guarantees private property, with the correlative right of inheritance. To be sure, property must be used in ways consistent with the well-being of the collectivity. But expropriation is permissible only "for the public benefit," "on a legal basis," and with compensation rendered "unless a Reich law orders otherwise." Unearned increment in the value of land is, however, to be used "for the common benefit"; and one of the instrument's famous articles (156) looks cautiously towards progressive socialization of property and businesses of all kinds by providing that the national government may—with due regard for compensation—"transfer to public ownership private economic enterprises suitable for socialization." In point of fact, but little had as yet been done in this direction when the National Socialists came into power. As for labor, the national government is required to take it (including intellectual work as well as other kinds) under special protection, to enact a uniform labor law, and to maintain an extensive system of health, old age, and other forms of social insurance; and another notable article (165), calls upon laborers and employees to coöperate on equal terms in regulating conditions of work and wages, "and also in the general economic development of productive forces."

Following this last-mentioned provision comes the constitution's interesting scheme for a system of workers' and economic councils. The plan, no doubt, was inspired in part by the soviet idea and to that extent, although intended to operate on a bourgeois basis, was in the nature of a sop to the radical elements. It was, however, a logical way of effectuating the economic democracy—the working-class right of co-decision—so long

Workers' and  
economic  
councils

contended for by the Social Democrats, and it had significant precedent as far back as 1880, when Bismarck himself gave representation to agriculture, commerce, and even labor, in a Prussian economic council. To begin with, there was to be a hierarchy of "workers' councils," composed equally of workmen and employers, and starting in the individual factory at the bottom, with others organized on a regional or district basis, and a national council at the top—the whole paralleled (so it was expected) by corresponding sets of employers' councils. In the second place, there were to be "economic councils"—one in each district and one for the nation as a whole—each consisting of representatives of the appropriate workers' council together with spokesmen of employers "and other interested elements of the population," so blended that all important vocational groups would be represented "in accordance with their economic and social importance."

As a mechanism for promoting industrial democracy, improving the relations of workers and employers, and giving the government the benefit of expert economic advice, the system as outlined had a good deal of attractiveness. Various circumstances, such as the depressed condition of industry, jealousy on the part of the trade unions,<sup>1</sup> and the fact that the plan envisaged a type of public organization not wholly compatible with the purely political system provided for in earlier portions of the constitution, prevented it, however, from being realized to any great extent in practice. The district economic councils have never been set up; and although a National Economic Council has existed since 1920, it is still only "provisional" and not fully endowed with the powers contemplated in the constitution.<sup>2</sup> Formerly, the body consisted of 326 persons, arranged in ten occupational groups, in six of which workers and employers were represented equally; and on the whole it reflected the varied economic life of the nation rather satisfactorily. Criticism directed at its unwieldy size bore fruit, however, in a law promulgated by the Hitler government in April, 1933, under

<sup>1</sup> The unions instinctively disliked the council plan and were won over to it only after being assured that their own existence and normal activities would not be interfered with. In practice, it was next to impossible to keep the fields of the councils and the unions distinct, and the latter were largely of the opinion that the councils were useless. Many employers' associations were inclined to agree with them.

<sup>2</sup> For the measure creating it, see F. F. M. von Bieberstein, *op. cit.*, 372-387.

which the membership is at present restricted to 60 persons named for four-year terms by the president of the Reich on nomination of the national cabinet.<sup>1</sup> Receiving and considering important economic and social measures before they were submitted to the Reichstag, initiating occasional measures of its own for parliamentary consideration, and in any case giving the law-making authorities the benefit of its presumably expert advice, the Council, in the first ten years of its existence, functioning mainly through committees, did much earnest and useful work, especially in relation to currency stabilization and legislation concerning labor and tariffs. After 1930, it was relegated to the background by the same conditions and developments that threw the Reichstag itself into eclipse, and what its rôle will be under the dictatorial régime remains to be disclosed.<sup>2</sup>

Two questions of major import in the Weimar debates of 1919 were: (1) Should the federal form of government be preserved, and (2) Should the states be left with boundaries and names as they had been under the Empire? In behalf of federalism it could be urged that it was in line with long German tradition and experience; that several of the states were political entities rooted deeply in history and both desirous and deserving of maintaining something of their former position; and that while the lesser states, especially in the south, had been jealous of Prussia's preponderance under the Empire, a consolidated, unitary system would be likely to mean a Prussianization of the whole that would be even less agreeable. There were, however, strong considerations and influences the other way. Federalism was regarded as having many inherent disadvantages, and as being generally on the decline throughout the world. Not even the far-reaching guarantees of states' rights in the imperial constitution had availed to prevent a pronounced centralizing tendency in Germany in the decades before 1918—in finance, in military arrangements, in the interpretation of "reserved

Reich and  
Länder: the  
problem of  
federalism

<sup>1</sup> J. K. Pollock and H. J. Heneman, *The Hitler Decrees*, 39-40.

<sup>2</sup> For a full account of the theory and origins of the councils system, see H. Finer, *Representative Government and a Parliament of Industry* (London, 1923). More recent descriptions of the nature and work of the provisional National Economic Council include L. L. Lorwin, *Advisory Economic Councils* (Washington, 1931), 12-30, and E. Lindner, *Review of the Economic Councils in the Different Countries of the World* (Geneva, 1932), 41-46.

rights," in administration—a tendency evidenced not only in formal constitutional amendments, in legislation, in agreements between imperial and state authorities, but in the general sweep of usage and custom as well. Long before 1914, powerful elements had favored suppressing the states altogether, or at all events subordinating them under a strictly unitary system; and although those elements had been chiefly of the militarist and imperialist persuasion, there were liberal-minded men in the Weimar Assembly who argued that post-war Germany could hope to maintain herself in the face of her victorious enemies only if her people were marshalled under a single, centralized government—only if organized in an *Einheitsstaat* rather than a *Bundesstaat* as of old.

The question  
of political  
geography

Deeply involved in the problem was the further question of redrawing the political map of the country. The external boundaries were changed perforce, through the taking away of upwards of 35,000 square miles of territory under terms of the treaty of Versailles;<sup>1</sup> and a provision inserted in the new constitution contemplating the annexation of Austria was rendered of no effect by action of the Supreme Council of the Allied and Associated Powers.<sup>2</sup> But the essential question was as to whether,

<sup>1</sup> Lands populated mainly by non-Germans were assigned to the newly created republics of Czechoslovakia, Poland, and Lithuania. In the north, Denmark by plebiscite acquired a large part of the old duchy of Schleswig. On the west, a rectification of frontiers gave Belgium the districts of Eupen and Malmedy. Alsace and Lorraine were returned to France. Indeed, a belt of territory populated heavily by Germans and cutting across Prussia from the Polish borders to the North Sea—the much-discussed "Polish corridor"—was given to Poland, thereby isolating thousands of square miles of east Prussian soil from the remainder of the Reich. It should be noted, too, that the coal-bearing Saar Valley was placed under the jurisdiction of the League of Nations for a period of 15 years, with a view to a decision by the inhabitants at the end of that time as to whether to remain with Germany or to join France. The total loss of population was some six millions. For full discussion of the subject, see W. H. Dawson, *Germany Under the Treaty* (New York, 1933), Chaps. iii, v–viii.

<sup>2</sup> Article 80 of the Versailles treaty bound Germany to "respect strictly the independence of Austria." Discovering in Article 61 of the Weimar constitution a provision for the representation of Austria in the Reichsrat "after its union with the German Reich," the Supreme Council first pronounced the offending section null and void and afterwards, on August 11, 1919, forced Germany to sign a diplomatic act making similar declaration. From thence until the present, the question of the *Anschluss*, i.e., the union of Austria with Germany, has been a disturbing element in European politics—never more so than during a period of political upheaval in the southern republic in 1934. Had the union been allowed in 1919, Germany's territorial and populational losses as a result of the war would have

assuming that states were to continue to exist (on a federal basis or otherwise), the number and boundaries of such divisions should go on as before. The nub of the matter was the future of Prussia. Long before the war, the criticism had been heard that imperial Germany was not a true Reich at all, but only (as Bismarck really intended it should be) a masterful Prussia surrounded by minor states in different stages of vassalage. Inclined at best to particularism, and holding Prussian leadership chiefly responsible for the misfortunes that had befallen the country, Bavaria and other southern states were so separatist-minded by 1919 that there was actual fear lest they should break away and set up for themselves if Prussia were not dismembered or otherwise put under restraint. In the event that the country as a whole held together, there must, in the difficult days to come, be more unity and centralization. Yet if Prussia remained intact, would not this merely enhance her power? Moved by considerations such as these, the Preuss Commission proposed that the states be evened up in area and population by dividing Prussia into from seven to nine states and combining the others into approximately the same number, giving a total of perhaps 15, which should then be organized in a strictly federal republic.<sup>1</sup> As further justification for the scheme, it was argued that Prussia was historically only a polyglot, artificial combination of territories swept together by conquest and dynastic marriages, with hardly more natural unity than the now dissolving Hapsburg dominion farther south.

There were, however, plenty of obstacles. Who should assume authority to work out the division? On what basis, *e.g.*, by plebiscite or otherwise, should the new grouping be made? If more unity was desired, was not the dismemberment of the largest of the states a poor way to go about attaining it? Could not Prussian dominance be curtailed without breaking the state in pieces? As for Prussia herself, she naturally furnished stiff opposition, arguing that dismemberment would be a sorry reward for bearing the brunt of the war, and that through the collapse of the Hohen-

been almost exactly compensated. See P. Slosson, "The Problem of Austro-German Union," *Internat. Conciliation*, No. 250, May, 1929; A. J. Toynbee, *Survey of International Affairs, 1931* (Oxford, 1932), 297-323.

<sup>1</sup> Dr. Preuss himself strongly favored a unitary system, or at all events as great a degree of unity as could be achieved, and eventually became an opponent of Prussian dismemberment.



zollern dynasty she already had lost much of her privileged position and importance. As for the other larger states, they too—particularly Bavaria—cooled toward the proposal when it dawned upon them that if Prussia were dismembered they might not escape a similar fate.<sup>1</sup>

Constitutional provisions and resulting changes

In the end, the constitution's makers dropped the issue and contented themselves with writing into the completed instrument an article declaring that the division of the Reich into states—officially known as *Länder*<sup>2</sup>—"should serve the highest cultural and economic progress of the people" and stipulating that thenceforth new *Länder* might be created and boundaries changed by constitutional amendment, and even by ordinary law provided that all *Länder* directly affected gave their assent, or that in the absence of such assent, the people concerned agreed by a three-fourths vote, or, indeed, provided that "an overwhelming national interest" required the given change.<sup>3</sup> Nor did these provisions for "mobility of frontiers" prove a dead letter. Prussia was never divided;<sup>4</sup> on the contrary, she gained additional territory from subsequent readjustments affecting other *Länder*. But in 1920 a new *Land* of Thuringia came into being, consolidating as many as seven little states of earlier days;<sup>5</sup> in the same year, the Coburg portion of the duchy of Saxe-Coburg-Gotha joined Bavaria, the remainder casting in its lot with Thuringia; in 1922 the Pymont section, and in 1929 the Waldeck division, of Waldeck-Pymont united with Prussia; and altogether the number of states was reduced from 25 under the Empire to a total of 17, where it stood for years, until in December, 1933, under the auspices of the Hitlerian dictatorship, Mecklenburg-Strelitz was united with Mecklenburg-Schwerin to form the single state of Mecklenburg.<sup>6</sup>

<sup>1</sup> On the controversy in the Assembly and the various proposals that were made, see R. Brunet, *The New German Constitution*, 43-57.

<sup>2</sup> Meaning, literally, "areas" or "territories," and carrying no such suggestion of political power as the term *Staaten* ("states").

<sup>3</sup> Art. 18. Compare the insecurity to the states resulting from this article with the guarantees of statehood laid down in Art. IV, § 3, of the Constitution of the United States.

<sup>4</sup> Except for the territories lost by the peace treaties.

<sup>5</sup> This consolidation had passed through its initial stages before the Weimar constitution took effect.

<sup>6</sup> In 1922, the Upper Silesians voted against setting up separately, as did, two years later, the inhabitants of the old Hanoverian portions of Prussia. On the general subject, see H. Kraus, *Germany in Transition* (Chicago, 1924), Chap. vi.

Far from suppressing the former states, the Weimar constitution accepted, recognized, and perpetuated them; it even gave their governments representation in a federally constructed body, the eichsrat,<sup>1</sup> corresponding structurally if not functionally to the old Bundesrat. Their general position under the new plan was, however, very different from before. In the first place, their territorial integrity and even their very existence lay at the mercy of authorities that they could not control; under given conditions, they could be dismembered, or even blotted out completely, by the government at Berlin. In the next place, they were not free, as they had been under the Empire, to decide for themselves what form of government they would have. By strict injunction of the Weimar instrument, every one must maintain a republican government, with representative assemblies (both state and municipal) elected by "universal, equal, direct, and secret suffrage of all German citizens, both men and women, according to the principles of proportional representation, and must have a responsible cabinet."<sup>2</sup> In the third place, designated by the politically colorless term *Länder*, they were allowed powers which, in themselves small, rested only upon the precarious basis of a constitution that could be amended by the national government (*i.e.*, the Reichstag and Reichsrat, or even the Reichstag alone), and that, therefore, could at any time be shifted, independently of the *Länder* as such, to the advantage of the Reich.

General position of the *Länder* under the Weimar constitution

In the light of these fundamental weaknesses in the position of the *Länder*, it is difficult to see how the system for which the constitution provided can properly be regarded as federal. Many German writers, to be sure, have contended that it was such. The *Länder*, they point out, had original existence, antedating the new Reich; their powers were residual, as are those of the states in the United States; and in practical operation

Not a truly federal system

There have also been some interchanges of territory designed to remedy an anomalous situation in which several *Länder* are found possessing lands lying wholly within the boundaries of other *Länder*. In 1928, for example, Saxony gave Thuringia 14 pieces of Saxon territory located within Thuringian boundaries, and Thuringia reciprocated with 17 pieces of her own territory which were located in Saxony. As late as 1929, the Land of Brunswick consisted of little else than 28 enclaves, situated for the most part in Prussia. See W. H. Dawson, "Mending the German Constitution," *Contemp. Rev.*, Apr., 1929.

<sup>1</sup> See pp. 746-748 below.

<sup>2</sup> Art. 17.

the scheme in general undoubtedly looked federal. It, however, true federalism requires a distribution of public powers between a central government and a set of divisional governments on such lines that neither central government nor divisional governments can alter it by their own independent action, the Weimar system does not qualify. If our government at Washington could independently withdraw any and all powers from the states, take from Texas half of its territory, and annex Rhode Island to Connecticut, we certainly should no longer think of ourselves as having a federal form of government. Germany under the Weimar constitution had a governmental system from which the historic stamp of federalism had by no means been erased, and popular concepts of it ran largely on federal lines. But in the final analysis the system was unitary.<sup>1</sup>

Distribution  
of legislative  
power

Particularly significant were the arrangements for legislation. Under the Empire, the national government had exclusive legislative power over a few matters, *e.g.*, customs duties and the navy, and concurrent power with the states over a longer list. The bulk of legislation was, nevertheless, enacted and enforced by the states. Under the Weimar constitution, on the other hand (quite apart from the extraordinary developments under Hitlerian dictatorship in 1933 and after), national legislative authority was carried about as far as it could go without depriving the *Länder* of all reason for having legislatures at all. First of all, the Reich had exclusive power to legislate on a wide range of subjects—foreign relations, colonial affairs, citizenship, immigration and emigration, national defense, currency, customs duties, and postal, telegraph, and telephone services.<sup>2</sup> In the second place, it had unrestricted, although not exclusive, power to legislate on other vital matters

<sup>1</sup> Most German constitutional lawyers are of this opinion, although some, baffled by the problem, are inclined to brush it aside as of only theoretical importance. For a scholarly discussion of the subject generally, see R. Emerson, *State and Sovereignty in Modern Germany* (New Haven, 1928), 236–253. The only other post-war European constitution which contemplated arrangements to any degree approximating federalism was that of Austria. See A. Headlam-Morley, *The New Democratic Constitutions of Europe*, Chap. iv; A. J. Zurcher, *The Experiment with Democracy in Central Europe* (New York, 1933), Chap. iii. Aside from Czechoslovakia, where in 1928 four historic provinces were granted diets, with some administrative autonomy (though falling far short of federalism), the nationalist spirit so prevalent in Europe in recent years has everywhere brought federalism into increasing disfavor.

<sup>2</sup> Art. 6.

such as civil law, criminal law, judicial procedure, poor relief, the press, the right of association and of assembly, public health, trade, industry, mining, insurance, railways, and the "socialization of natural resources and of economic undertakings."<sup>1</sup> The *Länder* might legislate on these subjects so long as, and in so far as, the Reich did not do so; but Reich legislation, when exacted, took full precedence; and it may be added that most of the field which the constitution regarded as concurrent (especially those parts pertaining to social welfare legislation) was in practice rapidly preempted by the Reich. Power to tax (including full control over all taxes the proceeds of which went to any extent into the national coffers) was conferred also, subject only to the requirement that if the Reich laid claim to taxes or other revenues formerly belonging to the states, due consideration should be given to the latter's financial needs.<sup>2</sup> Finally, the Reich was authorized to lay down "fundamental principles" on various subjects—taxation, land titles and distribution, education, religious associations, and others—for the guidance of subordinate legislative bodies.<sup>3</sup> To be sure, Great Britain and the United States are familiar with the fixing of norms or standards by national authorities, notably in connection with various forms of grants-in-aid. General constitutional provisions for "normative legislation" are, however, unusual.<sup>4</sup>

The supremacy of the Reich in the domain of legislation would have been pretty well established by the foregoing provisions alone. The matter was clinched, however, by a clause of the constitution—of similar purport to a well-known provision of the constitution of the United States<sup>5</sup>—which tersely declared national laws "superior" to the laws of the *Länder*; and whereas, in our own country, the question of how conflicts between national and state laws were to be legally resolved was left to future settlement, the Weimar constitution itself explicitly provided for decision by a "superior judicial court."<sup>6</sup> A limited amount of judicial review existed under the Empire; courts of due competence could inquire whether an imperial or state law had found

The supremacy of national laws: judicial review

<sup>1</sup> Art. 7.

<sup>2</sup> Art. 8.

<sup>3</sup> Art. 10.

<sup>4</sup> Austria affords another example of the same thing.

<sup>5</sup> Art. 6, § 2.

<sup>6</sup> Art. 13.

its way to the statute book in the regular manner, and the Supreme Judicial Court (*Reichsgericht*), sitting at Leipzig, could, and did, decide whether state laws were in conflict with imperial law, and therefore unenforceable. The Weimar constitution recognized no general function of judicial review on lines comparable with those that have come to prevail in the United States. But it perpetuated the form of review practiced by the *Reichsgericht* before 1918; and whereas the constitution spoke only of questions of conflict of law raised by "the competent national or state authority," the Supreme Court (designated by statute of 1920 to perform this function) has in fact accepted jurisdiction where the issue was raised merely by a private individual. Furthermore, whereas the constitutional provision on its face extended only to the constitutionality of state laws, the Supreme Court as early as 1925 declared itself competent to pass on the substantive validity of national laws as well. Germany became, therefore, one of the several countries of post-war Europe in which judicial review has been developing on a scale to challenge world-wide attention.<sup>1</sup>

An uncertain  
situation

The present status of the matter is, however, considerably clouded. In the first place, one cannot be sure that—quite apart from recent confusing developments to be mentioned below—the *Reichsgericht's* interpretation of its own powers will stand. There are other tribunals, such as the High Court of State (*Staatsgerichtshof*) and the *Reichsfinanzhof*, which are, within the limits of their respective jurisdictions, quite as supreme as the *Reichsgericht*, and it is not inconceivable that one of these may arrive at a contrary conclusion.<sup>2</sup> That such a possibility is not merely theoretical is borne out by the fact that the best German authorities on constitutional law are seriously divided on the subject. Even if one approaches the problem from the German point of view and attempts to draw a distinction between "intrinsic" and "extrinsic" review, the lack of expert unanimity still prevails. Many scholars insist that extrinsic review, *i.e.*, an investigation as to whether the law in question was passed in due form and has not been superseded by a later or a higher law, is an executive and not a judicial function. It is equally

<sup>1</sup> Between 1920 and 1928, the Supreme Court adjudicated no fewer than 20 disputes involving constitutional issues.

<sup>2</sup> See p. 791 below.

contended by many that the intrinsic, or material, unconstitutionality of a law is not, under the constitution, an appropriate matter for judicial determination. The situation is the more uncertain by reason of the fact that the advent to power of the National Socialist dictatorship in 1933 has, temporarily at least, pushed the issue of judicial review out of practical politics into the realm of academic speculation. "National laws," says a remarkable Hitlerian measure in a passage already quoted, "can be enacted by the national cabinet as well as in accordance with the procedure established in the constitution. . . . The national laws enacted by the national cabinet may deviate from the constitution in so far as they do not affect the position of the Reichstag and the Reichsrat." Under such an order of things—with the constitution itself largely in abeyance—judicial review, whatever it previously was, becomes for the time being, along with parliamentary government itself, a sheer fiction.<sup>1</sup>

Under the Empire, national laws were enforced largely by state, rather than by imperial, authorities. The Weimar constitution continued the plan; indeed, by providing that national laws should be executed by the authorities of the states in so far as the laws did not themselves stipulate otherwise,<sup>2</sup> it clearly set up a presumption in favor of state execution. All measures, however, on matters over which the Reich had *exclusive* control were now enforced by national authorities (this had not previously been the case), and likewise national laws on financial matters, even though the legislative functions of the Reich in that domain were, of course, not exclusive. This made a good deal of difference, and the upshot was that the administrative activity—and consequently the administrative machinery—of the new national government became considerably more extensive than that of the old one. Control from Berlin over state officials when engaged in administering national laws was also increased. Compulsory instructions could be issued; and whereas in former times imperial commissioners—although permitted to be in direct touch locally with state functionaries charged

Arrange-  
ments for ad-  
ministration

<sup>1</sup> The development of judicial review in Germany is discussed in J. Mattern, *op. cit.*, 570-613; C. J. Friedrich, "The Issue of Judicial Review in Germany," *Polit. Sci. Quar.*, June, 1928; and C. G. Haines, "Some Phases of the Theory and Practice of Judicial Review of Legislation in Foreign Countries," *Amer. Polit. Sci. Rev.*, Aug., 1930.

<sup>2</sup> Art. 14.

with enforcing national laws—could criticize or guide such functionaries only by acting through the state governments, considerable leeway for direct control was now allowed. In short, the Reich relied less heavily than before upon state authorities for the administration of its laws, and it controlled them more fully and directly in the exercise of such functions as remained. Although worked out on different lines, central control over local administration had, even before the drastic changes of 1932-33, become almost equally extensive in Germany and France.<sup>1</sup>

Later eclipse  
of the *Län-  
der*:

1. Centraliz-  
ing tenden-  
cies to 1932

Weak as was the position to which the Weimar constitution relegated the *Länder*, there were people who had favored subordinating them still farther, or even doing away with them altogether. Until forced to compromise, Dr. Preuss himself had thought in terms of a wholesale rearrangement of internal boundaries as an incident to the establishment of a strictly unitary governmental system. After 1919, the particularistic sentiments which had frustrated the plans of the unitarists continued strongly in evidence, especially in Bavaria, Baden, and Württemberg. The general tendency was, nevertheless—as it had been in imperial times—toward centralization, not only because the national government reached out steadily for more control on legislative and administrative lines, but also because in the existing difficult situation some of the *Länder* proved too weak financially to carry their local burdens, some showed incompetency (or at least a lack of success) in managing their affairs generally, and all required as much encouragement and assistance from Berlin as they could secure. So generally agreed did it become that the relations between the Reich and the *Länder* would have to be overhauled that early in 1928 the national cabinet convoked a conference of state representatives at the capital expressly for consideration of the problem; and although the meeting produced no immediate results, it went on record to the effect that a “fundamental reform” was necessary and evidenced strong support (save only in the case of the south German states) for plans under which the diets of the *Länder* should be abolished, the administration of Prussia merged with that of the Reich, and the remaining *Länder* replaced by

<sup>1</sup> J. Mattern, *op. cit.*, Chap. vi.

new and purely administrative areas arranged by the central government.<sup>1</sup> A main object (although other ends were in view) was to achieve economies by doing away with governmental duplication, especially as between the Reich and Prussia.

The remarkable shift of opinion evidenced by the foregoing developments is worth bearing in mind as we approach the drastic measures of 1932-33 relative to the status of the *Länder*, the significant thing being that not so long ago, Social Democrats and other moderate elements represented in the 1928 conference were prepared to go almost, if not quite, as far in obliterating the *Länder* as the Nazi government has gone in more recent times. The first overt steps in the now historic process of national consolidation were taken, indeed, in the summer of 1932, six months before Hitler became chancellor. In all parts of the country, but especially at Berlin and throughout Prussia, the National Socialist movement was now producing all manner of disorder. Hitlerites and Communists were clashing whenever they met, and the Social Democratic Prussian government of Premier Otto Braun was accused of being both unwilling and unable to deal adequately with the situation. Spurred by Reich Chancellor von Papen, and acting on the basis of Article 48 of the national constitution,<sup>2</sup> President von Hindenburg, on July 20, 1932, issued a decree ousting the Prussian cabinet and transferring its functions to the Reich chancellor in the capacity of "national commissioner."<sup>3</sup> Contending that they were not guilty of any dereliction and that public safety and order were not seriously endangered, the ministers brought suit in the Supreme Court at Leipzig to recover their offices. The most that they got out of the proceeding was, however, a ruling that the action taken was constitutionally valid only as a temporary measure, and that it was to be construed as applying only to their functions of a purely administrative nature. Assurance had been given, not only that no general supplanting of the *Länder* governments was intended, but that the special régime in Prussia would be terminated as soon as conditions justified. In point of fact, however, no such action was ever taken. On the contrary, even before Hitler's accession to the chancellorship

2. National control extended over Prussia

<sup>1</sup> For fuller information, see F. F. Blachly and M. E. Oatman, *op. cit.*, 25-27.

<sup>2</sup> See pp. 709-713 below.

<sup>3</sup> J. K. Pollock and H. J. Heneman, *The Hitler Decrees*, 4-5.



(January, 1933), all so-called "Marxists" were swept from office and plans laid for full absorption of the *Land* into the Reich. After Hitler came to power, von Papen, as ex-chancellor, was reappointed national commissioner, with increased authority; a new type of council of state was created; provincial administration was reorganized; the administration of Greater Berlin was consolidated under a "state commissioner" appointed by the Reich Minister of the Interior; the state police was brought under national control; and the diet was prevailed upon to vote its own suspension until 1937.<sup>1</sup> By midsummer of 1933, little or nothing remained of Prussia's former rights of self-government.

3. Nazi  
policy and  
the virtual  
extinction of  
the *Länder*

Because of its size and importance, and because Berlin was its capital, Prussia was thereafter dealt with as a rule in special acts applying only to that area. The rest of the *Länder*, however, came in for treatment no less drastic, and with similar objectives in mind. In March, 1933, national commissioners were dispatched to take over all police power in Bavaria, Baden, and such other *Länder* as were not already, as a result of local elections, under purely Nazi governments or coalition governments dominated by Nazis. In the following month, the professedly temporary régime of national commissioners was replaced by a system of "national governors" having every appearance of being designed to be permanent, and generally construed at the time as marking the end of whatever autonomy had remained.<sup>2</sup> Appointed by the Reich president, on proposal of the chancellor, from among residents of the respective states, the governors were charged with many duties in detail, but most fundamentally with that of seeing that the measures and policies emanating from the Nazi government at Berlin were carried out to the letter. Shortly after becoming chancellor, Hitler had indicated that the separate existence of the *Länder* would not be brought to an end.<sup>3</sup> Speaking to the assembled Reich commissioners three months later, he, however, employed language strongly suggesting the contrary,<sup>4</sup> and as the year 1933 drew to a close indications multiplied that within no very extended period the *Länder* would be wiped from the map and

<sup>1</sup> For the texts of most of these measures, see J. K. Pollock and H. J. Heneman, *op. cit.*, *passim*.

<sup>2</sup> J. K. Pollock and H. J. Heneman, *op. cit.*, 18-19.

<sup>3</sup> Speech before the Reichstag, March 23, 1933.

<sup>4</sup> J. K. Pollock and H. J. Heneman, *op. cit.*, 77-78.

the country consolidated in form, as it already was in fact, in a completely unitary state.

At the date of writing (February, 1934), matters had not advanced quite to this point. Indeed, it was known that Nazi opinion was itself divided upon the desirability of going so far, there being those (supported by President von Hindenburg) who were unwilling, after all, to see state frontiers and identities—particularly those of Prussia—disappear completely. Accordingly when, on January 30, 1934, the now well-nigh powerless Reichstag was convoked for a one-day session to place the stamp of approval upon a "Reich Reform Bill" prepared by the government, the measure as presented and promptly passed stopped short of obliterating the *Länder* entirely. It permanently abolished the state diets, together with all state legislative functions; it took over for the Reich government all administrative and judicial functions; it left the surviving state administrations as mere agencies for executing the measures and policies of the Reich, under the direction of Reich authorities; and, the state governments formerly represented in the Reichsrat, or Federal Council, having thus been reduced to hollow shells, the Reich government was empowered, not illogically, to do away with the Reichsrat itself.<sup>1</sup> Nothing, indeed, was left to the *Länder*—large or small—except a limited share in executing national laws over which they had no control, together with (for the time being at least) such consolation as they could draw from keeping their boundaries, colors, and insignia. To all intents and purposes, the historic German states, and their pale though still lively images as perpetuated in the Weimar constitution, were no more.

<sup>1</sup> A decree to this end was promulgated two weeks later. See p. 750 below.

## CHAPTER XXXII

### PRESIDENT, CABINET, AND NATIONAL ADMINISTRATION UNDER THE WEIMAR CONSTITUTION

The problem  
of a national  
executive

The constitution-makers of Weimar found no difficulty in agreeing upon a parliamentary system of government, but they were for a time considerably puzzled about the form to be given the executive. There were those among them—chiefly the Independent Socialists—who opposed having any titular chief executive at all. A president or other such official, they contended, either would stay within the limits marked out for him, in which case he would be ornamental, costly, and useless, or he would exceed his legal powers, in which event he would be dangerous as well. Let the executive function, they said, be vested in a group of persons chosen by Parliament and acting merely as a committee thereof, on the general model of the collegial executive of Switzerland. Interestingly enough, this point of view prevailed in Prussia, Bavaria, Baden, and others of the *Länder*, where, under the new frames of government, a titular executive was dispensed with and executive power lodged directly in a group of ministers, headed by a minister-president chosen by the parliamentary body.<sup>1</sup> For the purposes of the Reich, however, the plan did not commend itself. Rather, a majority of the delegates listened with approval as Dr. Preuss and his supporters argued not only for a titular executive, but for an executive with a large amount of power. A strong and democratic national legislature, it was conceded, was an excellent thing, but it should be counter-weighted with an executive standing on an equal basis of popular support and able upon occasion to impose a check upon the legislature's activities. A strong executive would be in line with German tradition, and would have the added practical advantage of serving as a symbol of unity among a people discouraged by defeat and divided

<sup>1</sup> The same arrangement was adopted in Estonia, but discarded in January, 1934, when in accordance with a plebiscite of the previous October, the minister-president assumed the functions of president of the Republic.

by racial, religious, and political cleavages, and also of giving the nation a show of dignity and force in the eyes of a hostile world. The problem as stated by Preuss and envisaged by the Assembly itself was to create a chief of state sufficiently powerful to act as a counterpoise to Parliament and on occasion to control it in the name of the people, yet not strong enough to dominate it arbitrarily and undermine the new régime of democracy.

The solution was not easy to find. The Reichstag of imperial days offered an obvious basis upon which to build the new and broader representative system, but the institutions of the Empire furnished little that could be turned to account in fabricating the desired style of executive. For obvious reasons, neither Prussian kingship nor Hohenzollern emperorship could be taken as a pattern. The old chancellorship, incompatible with every principle of parliamentary government, was almost equally useless. Nor did Dr. Preuss and his co-laborers find precisely what they desired in any foreign country. They did not want a government so much divided, on the principle of separation of powers, as that of the United States. They did not want what Dr. Preuss termed the "impure parliamentarism" of France. They did not want the weak, as well as plural, executive of Switzerland. In the end, therefore, they did the inevitable thing; that is to say, they hammered into shape an executive system—built around a strong president and a group of responsible ministers—into which went French, English, and of course German contributions, without precisely reproducing the arrangements to be found in any single country. If the German national executive (particularly the presidency) in the Weimar set-up was a hybrid institution, it is but fair to recognize that it was meant to be such.

Having decided that there should be a president, the architects of the constitution were confronted with the question of how he should be selected. Bent upon maintaining the ultimate supremacy of the legislature (and following the example of France), Poland, Latvia, Lithuania, Austria, Czechoslovakia, and other states which adopted new republican constitutions after the war provided for the election of their chief executives by the members of parliament convened in national assembly. This method would not, however, have been compatible with

A solution on  
unique lines

How should  
the president  
be chosen?

the type of presidency in mind for Germany; and although such men as Dr. Preuss fully recognized the danger that a president chosen directly by the people, and drawing his authority from them equally with the legislature, might not fit perfectly into a parliamentary system, they preferred to run this risk rather than see the president fall into the comparatively powerless position notoriously occupied by the president of France. The constitution accordingly was made to provide for direct election by "the whole German people,"<sup>1</sup> with every German citizen 35 years of age eligible.

As to the manner in which popular election should be carried out, the constitution was silent, save to provide that details should be "regulated by a Reich law." This was not because the Assembly failed to appreciate the importance of the matter, but, on the contrary, because so much concern was felt about it that no agreement could be reached. The main point at issue was whether safeguards should be provided to ensure election by majority. One plan proposed that if the first ballot failed to produce a majority for any candidate, the people should ballot again, at a "run-off" election, upon the two who had stood highest. To this it was objected that, on account of the multiplicity of parties, there would as a rule be many candidates, and that the popular vote would be so divided that even the highest two might easily have behind them only a minority of the electorate. A second plan ran on similar lines, with the difference that at the second balloting all candidates who chose should be permitted to remain in the race, and even new ones to enter, and election should at this stage be by plurality. A third plan, introducing the principle of alternative voting, provided that the electors should indicate their second as well as their first choices, ballots being transferred in accordance therewith when first choices should fail to yield a majority. A fourth scheme, advocated on the score of its simplicity, was that election should be by simple plurality on the first ballot.

Decision among these various proposals was arrived at in a

<sup>1</sup> Art. 41. It is interesting to note that M. Millerand considered direct popular election an indispensable means of strengthening the French presidency. Cf. p. 490 above. In 1929, Austria adopted a constitutional amendment providing for this method. To obviate the costs that would be entailed, the original plan of election by the legislature has, however, in practice been adhered to.

national law of May 4, 1920, legalizing the "run-off" plan, *i.e.*, the first in the order enumerated above. Before this method could actually be tested, however, dissatisfaction with it, chiefly on the ground already indicated, led, in March, 1925, to substitution of the second scheme, as being, after all, a reasonable compromise between rigid insistence upon a majority election and a total ignoring of the matter; and the two presidential elections that have thus far been held (exclusive of the original choice of Ebert by the Weimar Assembly) have been carried out in accordance with the revised law.<sup>1</sup> Candidates are placed in nomination by petitions signed by at least 20,000 individuals or presented by party groups, and any one receiving an absolute majority of the votes polled is forthwith declared elected. In the lack of such majority, the people are called to the polls a second time four weeks later to choose among such candidates as have not withdrawn, together with new ones who may have entered the race; and on this occasion the contestant securing the largest number of votes wins, regardless of whether it constitutes a majority. Those responsible for the final adoption of this plan recognized, of course, that it offered no guarantee against the election of a minority candidate. They considered, however, that the number of parties and of probable candidates rendered such a guarantee impracticable, while nevertheless hoping that after a preliminary test of strength at the first balloting, the parties would so concentrate their support upon fewer candidates as to make possible a majority election in the end.<sup>2</sup>

The method  
adopted

In the first of the two presidential elections held since the system was adopted, this hope narrowly failed of realization; in the second, it proved justifiable, although again by a narrow margin. The first president, Ebert (placed in office in 1919, as has appeared, by choice of the Weimar Assembly) died in 1925, a few months before the completion of his term, and the first election by the people took place in the spring of that year, almost immediately after the electoral law was put in its present form. Seven candidates were voted on (by 69 per cent of the electorate) at the first balloting, and no one received a majority;

Presidential  
elections  
since 1920

<sup>1</sup> The text of the law of 1920 is printed in M. von Bieberstein, *op. cit.*, 405-407.

<sup>2</sup> The standard work on the election of the president is G. Kaisenberg, *Die Wahl des Reichspräsidenten* (Berlin, 1925).

Jarres, nominee of the Nationalist and People's parties, polled almost 3,000,000 more votes than his nearest competitor, the Social Democrat Braun, yet only 39 per cent of the total. Then the lines of battle were redrawn. Parties of the moderate Left—Center, Progressives, and Social Democrats—joined in support of the Center candidate, Dr. Marx; all of the other candidates except Thälmann, the Communist, withdrew; and the parties of the Right, alarmed by the new alliance of the Left, besought and finally persuaded a new candidate to enter the lists in the person of no less a figure than Field Marshal Paul von Hindenburg. Resolving itself virtually into a contest between Marx supported by the Left and von Hindenburg supported by the Right, the second balloting (by 78 per cent of the electors this time) gave the latter a slight advantage, and the 77-year-old soldier became president. It was, however, a plurality election, since the votes polled by Marx and Thälmann exceeded those for the victor by more than a million.<sup>1</sup>

The next election took place upon the expiration of von Hindenburg's first term in 1932, and stirred unusual interest the world over because of Adolf Hitler's bold bid for power. Five candidates entered the contest: von Hindenburg, Hitler (National Socialist),<sup>2</sup> Thälmann (Communist), Duesterberg (Nationalist), and Winter (Independent). Two important groups that had supported von Hindenburg in 1925 were now against him, but on the other hand the Social Democrats—through a peculiarly ironical turn of the political wheel—were for him; and after a spirited campaign which brought 86 per cent of the electors to the polls, he received almost, but not quite, a majority (49.6 per cent) of the votes cast. Duesterberg and Winter withdrew; no new candidates entered; and after a new and vigorous stage of the campaign, the voters (at all events 83.5 per cent of them) marched again to the polls to settle the issue of von Hindenburg *vs.* Hitlerism on the one hand and Communism on the other. This time, notwithstanding that Hitler increased his vote by more than two millions, the President was reelected by a clear majority, *i.e.*, 53 per cent of the total;

<sup>1</sup> The figures were: von Hindenburg, 14,655,766; Marx, 13,751,615; Thälmann, 1,931,151.

<sup>2</sup> On the manner in which Hitler, Austrian by birth, acquired German citizenship in advance of this election, thereby becoming eligible for the presidency, see H. Kraus, *The Crisis of German Democracy*, 159-160.

and for the time being the aspirations of the leader of the Brown Shirts were thwarted.<sup>1</sup> Again, as in 1925, it was demonstrated that parties, leaders, and electors alike look upon the first poll as merely a test of strength, expecting that after this show has been made bargains will be entered into, party coalitions formed, and the contest narrowed down to its essential lines.

With a view to forestalling anything in the nature of a life presidency, the Social Democratic contingent at Weimar urged a presidential term of five years, with possibility of reelection not more than once. Believing it, however, for the good of the country that, as an offset to party turbulence, the office should have stability and a certain amount of permanence, Dr. Preuss advocated a term of seven years, with indefinite reeligibility, on the French model; and in the end this plan prevailed. Furthermore, in order to discourage the rise of such extra-legal limitations as are imposed by the no-second-term tradition in France and the no-third-term tradition in the United States, indefinite reeligibility was written expressly into the constitution. As pointed out, the Republic has already during its brief life seen one president succeed himself.

Presidential  
tenure:

1. Term

Americans will be interested to know that there was some thought at Weimar of providing for a vice-president. The Preuss Commission, however, threw its influence against creating a "republican crown prince," and provisions for presidential disabilities and vacancies were finally agreed upon as follows: (1) the chancellor should take the president's place during a brief interval of illness or other incapacitation; (2) if a president were to lose his reason, be involved in impeachment proceedings, or otherwise become unable to exercise his functions over a considerable period of time, the situation should be dealt with by a national law; and (3) in case of resignation, impeachment, or death, another president should forthwith be chosen by the people for a full seven-year term. A constitutional amendment of December 17, 1932, modified these arrangements, however,

<sup>1</sup> The final vote was: von Hindenburg, 19,359,983; Hitler, 13,418,547; Thälmann, 3,706,759. For complete tabulations of the votes in both the 1925 and 1932 elections, see A. J. Zurcher, *The Experiment with Democracy in Central Europe* (New York, 1933), 118. Cf. H. L. Childs, "The German Presidential Election of 1932," *Amer. Polit. Sci. Rev.*, June, 1932.



by stipulating that the official who should step into the president's place in the event of disability or "a premature vacancy" should be, not the chancellor, but the president of the *Reichsgericht*, or Supreme Court.<sup>1</sup>

'Suspend-  
and  
removal

the presidency, as has already appeared, was intended to be strong. At the same time, it was not to be autocratic; and provision was significantly made for removal not only by process of impeachment (the charges to be brought, on grounds of violation of the constitution or the laws, by the Reichstag, and the judgment to be rendered by a newly created tribunal, the *Staatsgerichtshof*, or High Court<sup>2</sup>), but also by vote of the people—in other words, by popular recall. This latter procedure (assuming it to be still effective, although the eclipse of the Reichstag leaves the matter in doubt) must be instituted by a two-thirds vote of the Reichstag suspending the president from office and putting to the electorate the question of whether he shall be definitely ousted or permitted to resume his functions. A bare majority of the popular votes cast is sufficient to work the president's downfall. If, however, the proposal fails, the accused is vindicated to such an extent as to be regarded as having been re-elected for a full seven-year term; and the Reichstag, rebuffed, is automatically dissolved and another chosen in its place. The general principle that the titular head of the state in countries having cabinet systems is politically irresponsible, since all of his orders and decrees must be countersigned by a responsible minister, here finds interesting exception.<sup>3</sup> The orders and decrees of the German president must be countersigned as in other countries.<sup>4</sup> But the unusual powers assigned him, together with the fact that he is elected coördinately with the Reichstag by direct popular vote, seemed to the framers of the constitution—as they have seemed to many German jurists since—to place him in a position such that it is logical and necessary to give the people opportunity as a court of last resort to decide between him and the Reichstag at times of fundamental conflict. No actual use of

<sup>1</sup> On the one occasion when the presidency has been vacated during a term, *i.e.*, at the death of Ebert in 1925, the Reichstag designated first Chancellor Luther and afterwards Dr. Walter Simons, president of the *Reichsgericht*, to fill the post until a successor could be chosen.

<sup>2</sup> See p. 791 below.

<sup>3</sup> Latvia appears to be the only other country in which the titular executive is removable by popular recall.

<sup>4</sup> Art. 50.

the procedure having been made, it can, of course, be interpreted only on theoretical lines.

Turning to the president's powers and functions, we encounter a difficult subject indeed. If he were the usual sort of titular head of a cabinet-governed state, it would formerly have sufficed to note the powers conferred upon him in the constitution, to point out that most of these were in fact exercised in his name by a ministry responsible to Parliament, and to emphasize that his own share in the government depended in large degree upon the extent to which he showed aptitude for advising with and influencing those who spoke and acted for him. Even before the rise of the Hitlerian dictatorship, however, the German president was not the usual sort of titular executive. Fitted, to be sure, into a cabinet system of government, he was nevertheless designed to be, in the words of Dr. Preuss, "a definite center, an immovable pole," in the constitution; and the position which he occupied would be hard to characterize, not only because the period in which the arrangement functioned was abnormal and because the only popularly elected president was not a typical political figure, but because the office, created by grafting a strong executive on to a parliamentary system, was a unique device which had not as yet revealed its full possibilities. To describe presidential powers as they exist under the present dictatorial régime would be even more difficult. It seems generally agreed that President von Hindenburg has been pushed into the background by Chancellor Hitler; and certainly the office now bears no actual effective relation to a parliamentary system, which (for the time being, at all events) no longer exists. In the absence, however, of means of knowing what the situation will be a year—or a month—hence if the National Socialist control continues, or whether a return to normal conditions will in time put matters back substantially where they were, the only feasible procedure is to content ourselves with trying to see what the presidency was up to 1933, speaking of it, as a matter of caution, in the past tense, but without implying that various features of the office as described do not still hold, in the absence of Hitlerian laws or other developments to the contrary.

Presidential  
powers and  
functions:

As head of the state, the president appointed and dismissed <sup>1. Executive</sup> the chancellor and, on the latter's recommendation, the min-

isters; appointed and dismissed also all other national officers, civil and military, "unless otherwise provided by law";<sup>1</sup> organized the executive departments, served as commander-in-chief of the military and naval forces, both in war and in peace; called and presided over cabinet meetings; wielded the power of pardon, although not that of amnesty; and in the realm of foreign relations, received and accredited ambassadors and ministers, and concluded "alliances and other treaties" (subject to the restriction that such international agreements, if within the legislative competence of the Reichstag, required the consent of that body), although war could be declared and peace made only by "Reich law."<sup>2</sup>

<sup>2</sup> Legislative

On the side of legislation, the president's powers, although circumscribed by many a constitutional provision, were nevertheless unusually extensive. A regular annual session of the Reichstag was provided for, but the president might cause special sessions to be convoked, and also might decree dissolutions. Having assured himself that they had been passed in due form, he promulgated all national laws by causing them to be published in the *Reichsgesetzblatt*, or National Law Gazette, with the qualification (1) that he might order any measure to be submitted to a popular referendum before promulgating it, and (2) that, except in the case of laws relating to the budget, to taxation, and to salaries, he must cause any measure to be so submitted if, promulgation having been postponed for two months on demand of one-third of the Reichstag, one-twentieth of the qualified voters in the Reich petitioned for a popular vote upon it.<sup>3</sup> There was, therefore, no absolute presidential veto, but a suspensive one of large potential importance. In addition, if the Reichsrat persisted in disagreeing to a bill which the Reichstag approved, the president might within three months order the measure referred to the people for determination of its fate. If a constitutional amendment was involved, it was mandatory to submit it—even though the Reichstag had given it a two-thirds majority—if within two weeks the Reichsrat so demanded.<sup>4</sup> "The object of

<sup>1</sup> Art. 46. Partly by statute, partly by decree, the appointment of most minor officials was delegated to ministers and other authorities.

<sup>2</sup> Art. 45.

<sup>3</sup> Unless, however, the Reichstag and Reichsrat agreed that the matter was urgent. See Art. 72.

<sup>4</sup> Arts. 74-76.

all these provisions," it has been remarked, "appears to be to furnish a possible corrective to hasty legislation, noisy minorities, ruthless majorities, popular interference in financial plans, and the like, by an elaborate system of alternative procedures over which the president (always advised by the cabinet) has a nominal control that theoretically removes a matter from . . . the legislature to the executive; or in the end leaves it to the final tribunal of public policy, the people."<sup>1</sup> There was also an extensive power of issuing decrees or ordinances. "Administrative" ordinances affecting only subordinate officials and touching the private citizen, at most, only indirectly, were assumed to be within the president's power without specific constitutional grant. It was conceded, too, that the conferment of any power upon the president automatically gave him the right to issue orders to the appropriate administrative authorities concerning the use of that power. On the other hand, he did not have, except by special authorization from Parliament, the right to issue "legal" ordinances, directly affecting the private rights and obligations of citizens, and enforceable by the courts.<sup>2</sup>

Of major public interest and importance among the powers conferred upon the president in the constitution were two which will be found indicated in the famous Article 48. The first, commonly known as the power or function of federal execution, came into play when a Land failed to discharge its obligations under the constitution or the laws, and involved authorization of the president to compel it to do so by such means, e.g., negotiation, as he might choose, and, if need be, "with the help of the armed forces." Here was a power equivalent to that wielded by President Lincoln in the American Civil War, even though, by more or less of a legal fiction, the force of the national government was in this instance employed against, not states, but citizens regarded as in rebellion. The power of federal execution in republican Germany lay by no means unused even before the stormy period of executive rule dating from around 1930. In 1920 it was employed against Thuringia and Gotha and in 1923 against Saxony, the president on each of these occasions sus-

Article 48:

1. Federal execution

<sup>1</sup> F. F. Blachly and M. E. Oatman, *Government and Administration of Germany*, 68.

<sup>2</sup> The emergency powers conferred by Art. 48 qualify this statement to some extent. On the general subject of the ordinance power, see J. Mattern, *op. cit.*, Chap. xi; and J. Moulin, "L'expérience allemande des décrets-lois," *Rev. Polit. et Parl.*, January 10, 1927.

pending the state authorities and appointing a national commissioner to act in their stead. Before 1918, the emperor could take action to compel a disaffected state to fulfill its "constitutional federal duties," but only with the assent of the Bundesrat. The president of the Republic required no one's assent.<sup>1</sup>

2. Emer-  
gency powers

The second of the specific presidential powers referred to is that of dealing with public disorder or other emergency conditions. Here is what the constitution says:

✓ "The Reich president may, if the public safety and order in the German Reich are considerably disturbed or endangered, take such measures as are necessary to restore public safety and order. ~~If necessary, he~~ may intervene with the help of the armed forces. For this purpose he may temporarily suspend, either partially or wholly, the fundamental rights established in Articles 114 [personal liberty], 115 [inviolability of dwellings], 117 [secrecy of postal, telegraphic, and telephonic communications], 118 [freedom of speech and press], 123 [right of peaceful assembly], 124 [freedom of association], and 153 [guarantees of property rights].

"The Reich president shall inform the Reichstag without delay of all measures taken under Paragraph 1 [federal execution against the states] or Paragraph 2 [just cited] of this Article. On demand by the Reichstag, the measures shall be repealed.

"In case of imminent danger, the government of any *Land* may take preliminary measures of the nature prescribed in Paragraph 2 for its own territory. The measures are to be revoked upon the demand of the Reich president or the Reichstag.

"Details will be regulated by a Reich law."<sup>2</sup>

Nature and  
extent

Here was a truly remarkable grant of power, opening the way *within the limits of the constitution* (and this is the significant thing) for what was tantamount to a dictatorship. The provision went even farther than any existing under the Empire; for, whereas under the imperial constitution the emperor could declare martial law in any portion of the federal territory if public security was threatened, and follow up with emergency measures if Parliament was not in session, submitting them to that body for approval at the earliest opportunity, under the Weimar constitution the president could resort to emergency powers regardless of whether the Reichstag was in session, and though he must report his actions, his measures did not lapse,

<sup>1</sup> F. F. Blachly and M. E. Oa'man, *op. cit.*, 71-74.

<sup>2</sup> From the translation of the constitution by M. Wolff appended to H. Kraus, *The Crisis of German Democracy*. The explanatory material in brackets has been inserted by the present writer for purposes of clarity.

as did those of the emperor, in the lack of formal assent from that body.<sup>1</sup> To be sure, the Reichstag might demand revocation of the measures, but in point of fact it did so on only two occasions—in 1921 and 1930. Experience in the latter of these instances was further instructive in that after the president had cancelled two emergency decrees at the Reichstag's request, the Reichstag was itself dissolved, the decrees were reissued, and the legality of the whole procedure was upheld by the *Reichsgericht*, or Supreme Court. The danger of dissension and disorder, menacing the very life of the Republic, was such when the constitution was adopted that special power of summary action in the executive seemed imperative; and the object of the paragraphs of Article 48 here under consideration was to enable the president to suspend private rights and, in general, to take such action against individuals and groups as he thought necessary to meet any emergency arising. The grant of power was very broad. The rights guaranteed in as many as seven of the constitution's articles might be suspended in whole or in part. Not merely "rebellion or invasion" (which alone justify suspension of the writ of habeas corpus in the United States<sup>2</sup>), but any serious disturbance of, or even danger to, "public order and safety" could be made the basis of action. And the national law envisaged in the last paragraph of the article, by which limiting conditions and procedures might have been laid down, was never passed. Small wonder that, although no such term as "dictator" is to be found within the four corners of the constitution, the word rarely failed to appear in even the soberest discussions of the famous article from 1919 onwards!

On the other hand, the article clearly did not contemplate purely arbitrary or irresponsible action by the president and his advisers; indeed, it was written into the document expressly to prevent anything of this nature. In the first place, the power, though extraordinary, was a creature of the constitution, to be exercised within the bounds of that instrument, and not as dictatorial powers have been exercised in various countries of contemporary Europe, among them Germany herself since 1933. Restrictions

<sup>1</sup> The conditions indicated as applying in the Empire were to be found mainly in a Prussian law of 1851 which, by Art. 68 of the imperial constitution, was to govern the subject until an imperial law was passed. No such law was ever enacted.

<sup>2</sup> Constitution, Art. I, § 9, cl. 2.

In the next place, its purpose was limited and defined, *i.e.*, to restore public safety and order—nothing more. Third, its use was to be temporary; the specified articles were to be “suspended” only “for the time being.” Fourth, the power was in no wise excepted from the requirement laid down elsewhere in the constitution that every presidential order or decree should be countersigned by the chancellor or a competent minister. Fifth, as stated above, every step taken must be reported to the Reichstag “without delay,” and must be retraced if the Reichstag so demanded. Finally, the president himself was responsible for what happened under Article 48, in the sense that he could be suspended from office by the Reichstag and removed by vote of the people for acts performed under it no less than for any others.

Emergency  
powers as ac-  
tually used

The state of the country being what it was in 1919, those who voted to place Article 48 in the constitution probably expected it to prove something more than merely a gun behind the door. But hardly any one could have foreseen the rôle which it has actually played. Starting with seven emergency decrees issued even before the Reichstag was organized in 1920, the list lengthened until by September, 1932, it had reached the amazing total of 233.<sup>1</sup> At first, the decrees were promulgated to meet actual or threatened public disorder. In time, dangers from this source subsided, and many people concluded that, having served its purpose, Article 48 would become little more than an historical curiosity. In 1928, only one decree was issued, and in 1929 none. Already, however, the idea had developed in government circles that the state might be quite as seriously endangered by currency and other economic difficulties as by physical outbreaks of lawlessness, and as early as 1923 we begin to read of decrees forbidding the sale of Reichsmarks abroad, revaluing tax payments in terms of gold, and suspending reparations payments in kind; and in later years, the government, confronted with multiplying economic and political troubles, fell back more and more upon the great reserve of power contained in—or at all events read into—Article 48, until it was found after 1930 relying almost exclusively upon this resource. Full and frank dictatorship might have gained the saddle in any case, but

<sup>1</sup> For the complete list, see L. Rogers *et al.*, “German Political Institutions: II, Article 48,” *Polit. Sci. Quar.*, Dec., 1932, pp. 583-594.

Article 48 became the spring-board from which the leap was made.<sup>1</sup>

The president was not intended, however, to become a monarch in disguise, and in the constitution he was hedged about with restrictions such that when dictatorship finally developed, it was not of his making and he was not the dictator. The chief executive was to be strong, yet also titular head of a government operated on parliamentary principles. On the one hand, he was to have the exceedingly important independent power of selecting the chancellor and, on the latter's advice, the ministers, and also of dismissing these key officials if displeased with their measures and policies. On the other hand, he was placed under heavy restraint in that all orders and decrees issued over his signature must be countersigned by the chancellor or "the competent minister," who thereby (as matters stood prior to the dictatorship) assumed responsibility before the Reichstag; and also in that, whereas the president could of his own accord dismiss a chancellor and ministers who were unwilling to do his bidding, the Reichstag could on its part compel him to dismiss them, however acceptable they were to him, if it disapproved of their policies. Further limitations imposed upon the president in the constitution included, as already mentioned, the Reichstag's power to suspend him by a two-thirds vote and the people's power to remove him from office altogether. The matter of responsibility was complicated and never had opportunity under normal conditions to become clarified; while the powers of suspension and recall lay wholly unused.

General constitutional restrictions upon the powers of the president

When, in 1925, Field Marshal von Hindenburg attained the presidency, many people gloomily imagined that republican government in Germany was doomed. The aged chief executive had throughout his life followed the profession of arms, had been a thoroughgoing monarchist, and was known to have lost none of his loyalty to his former chief, the deposed Kaiser. He was also, however, a man of his word, and once he had taken oath to "keep the constitution and the laws of the Reich,"<sup>2</sup> he so scrupulously performed his unaccustomed and unsought duties that his

Von Hindenburg as president

<sup>1</sup> See, in addition to the article cited in the foregoing note, F. F. Blachly and M. E. Oatman, *op. cit.*, 74-96; C. J. Friedrich, "The Development of Executive Power in Germany," *Amer. Polit. Sci. Rev.*, Apr., 1933; and G. Anschütz, *Die Verfassung des deutschen Reichs vom 11. August, 1919* (Berlin, 1930), 239-259.

<sup>2</sup> The oath is prescribed in Art. 42 of the constitution.



reelection in 1932 was viewed as a triumph for republicanism over the forces of reaction. Understanding (as had Ebert before him) that the presidency was meant to be a vital force in the government, he took advantage of chronic party confusion to follow to a great extent his own dictates in the selection of chancellors, and even directed chancellors-designate to form ministries from party groups which he himself specified. Departing still farther from British and French practice, he boldly made public his personal views on matters of legislation and policy, doing it in such a way, to be sure, as not openly to align himself with any particular party, yet under circumstances calculated to help turn the scales for or against important pending measures.<sup>1</sup> In May, 1932, he forced Chancellor Brüning and his cabinet from office, even though the deposed chieftain had but lately contributed powerfully to Hindenburg's reelection and at the time of his dismissal had at least a nominal majority in the Reichstag. In August following, after the National Socialists had made heavy gains in the Reichstag election of July 31, he invited Hitler to take a post in the von Papen cabinet, but flatly refused him the chancellorship—at the same time admonishing him to bear in mind his responsibility to the Fatherland and to the German people. Accepting the situation gracefully when, six months later, Hitler as chancellor had become inevitable, he lent reserved support to the new régime without being able to control it, and in later days has been somewhat eclipsed by it. His earlier actions very well indicate, however, the inherent vigor of the German presidency, in the hands of a vigorous man to be sure, yet quite within the bounds of the constitution.<sup>2</sup>

Chancellor  
and minis-  
ters: from  
Empire to  
Republic

In imperial days, the place filled in other European political systems by a responsible ministry or cabinet was, as we have seen, filled by a chancellor, responsible only to the emperor, while the ministers were merely non-political administrative heads, answerable to the chancellor, and through him to the

<sup>1</sup> A good illustration is afforded by the president's declaration in 1926 (although significantly made in a letter to a private correspondent, rather than in a public statement) against a proposal to expropriate the German princes without compensation. See H. Finer, *op. cit.*, II, 1155-1156.

<sup>2</sup> G. Schultze-Pfaller, *Hindenburg* (New York, 1932). On the presidency in general, see H. Finer, *op. cit.*, II, 1144-1160; F. F. Blachly and M. E. Oatman, *op. cit.*, Chap. iv.

emperor likewise.<sup>1</sup> For two decades prior to 1914, a running battle had been waged by liberal political elements in behalf of the principle of ministerial responsibility, with no tangible result, yet with increasing promise of ultimate success; and one of the major concessions of a hard-pressed régime as the war drew toward a close was a promise that thenceforth the chancellor should hold office only so long as he enjoyed the confidence of the Reichstag. At Weimar in 1919, the problem of what to do with the chancellorship, and what kind of a ministry to create, was naturally one of prime importance. It was taken for granted, of course, that the center of gravity in the new system should lie in the Reichstag, and that ministers, of whatever sort, should be made responsible to that body. It was even decided, as we have seen, to make the titular chief executive, the president of the Republic, directly answerable to Reichstag and people. But should there be a ministry constructed on the purely collegial principle, as in Great Britain and France (and, as it proved, in practically all of the countries that adopted new post-war constitutions)—a ministry in which the chancellor (under that name or some other) should be only *primus inter pares*, and all members should participate equally in decisions and bear equal responsibility for what was done? Or should the chancellorship be continued, with considerable curtailment of powers, yet on a different footing from the ordinary ministerial posts, and with chancellor and ministers organized on cabinet lines under what may be termed a limited collegial plan? There were those who favored going the whole distance and adopting the British and French system. Most groups in the Assembly, however, opposed so complete a break with the past; even Dr. Preuss was skeptical about the desirability of it. Notwithstanding the generally liberal tone of the Assembly, the German authoritarian tradition occasionally cropped out. And the same practical considerations that influenced the decision for a strong president argued for a chief minister who should be something more than the usual sort of premier—one who should be sufficiently preëminent and dominating to supply the leadership, coördination, and control that the country's future seemed likely to require.

A decision in favor of the limited collegial plan was arrived at with no great difficulty, and as the system took form in the con-

<sup>1</sup> See pp. 656-657 above.

Chancellor  
and ministers  
under the  
Republic—  
three points  
of distinction:

1. Mode of  
appointment

stitution and in later practice, chancellor and ministers, while spoken of collectively as forming "the government," *i.e.*, the cabinet, were found to differ in three main respects. First, as already observed, the chancellor is appointed outright by the president of the Republic, the ministers by the president only on nomination of the incoming chancellor.<sup>1</sup> Complete freedom in selecting the chancellor was designed to be one of the means by which the president could counterbalance the power of the Reichstag; and there is absolutely no constitutional restriction upon it. As long as normal conditions lasted, the discretion enjoyed did not, however, prove materially greater than that of the French president in performing a similar function. The same necessity of consulting the party leaders, and of deciding as the party situation dictated, was experienced; and when in 1932 President von Hindenburg was found appointing a chancellor (von Papen) with scant regard for the balance of party forces in the Reichstag, it was only because regular parliamentary government had broken down and dictatorship was impending. No more has the chancellor normally had a free hand in the choice of persons to be nominated for appointment as ministers. As in France, no single party—so long as true constitutional government lasted—ever commanded a majority in the legislature; all cabinets were of necessity coalitions; and the building of cabinet lists was accomplished not only by negotiation, but largely by nomination of quotas by the leaders of the parties participating at any given time. As indicated elsewhere, the chancellor has more than once—and ministers have in a large number of instances—been selected from outside the membership of the Reichstag.

2. Functions

A second, and more fundamental, difference between the chancellor and the ministers has been one of function, arising principally from a constitutional provision endowing the former with the power of determining "the outlines of the policy of the state," subject to responsibility to the Reichstag for the same.<sup>2</sup> In practice, as we have seen, the British prime minister, especially if a man of vigor, is a good deal more than the term frequently applied to him, *primus inter pares*, indicates on its face.<sup>3</sup> To be

<sup>1</sup> This remains as true under the dictatorship as before.

<sup>2</sup> Art. 56.

<sup>3</sup> See p. 104 above.

sure, the German chancellor, although presiding over the cabinet and casting a deciding vote in case of a tie, has under normal conditions had less control over the ministers as a director of administration than does the prime minister of either Great Britain or France. "Each minister," says the Weimar constitution, "conducts the office entrusted to him independently [within the lines of policy laid down by the chancellor], and on his own responsibility to the Reichstag." But even before the chancellorship became also a dictatorship, the chancellor had the supreme and sole function of fixing the broad outlines of national policy, becoming thereby a commanding political figure, "the trusted agent, as it were, of the legislature for the determination of policies which involve not only legislation but also the main lines of administration."<sup>1</sup> In Great Britain and France, the supreme policy-framing authority, aside at any rate from Parliament, is, not the prime minister (influential as he is), but the cabinet in its collective capacity. In Germany, ordinary ministers were not policy-makers at all under the Empire. Hardly more were they intended to be such under the Republic; and at this point we behold one of the most striking tendencies of the old system to persist under the new. Truth requires it to be added that—although some German authorities are of a different opinion—the plan has not worked out in practice altogether as intended. Under the Empire, the ministers held no meetings and had no collective character at all; they formed no cabinet, and had no opportunity to concern themselves as a group with matters of policy. Formed under the Republic into a cabinet which meets and deliberates, they have almost inevitably gained a substantial share in the consideration of policy; and one derives the impression that in actual practice what has been going on in meetings of chancellor and ministers (even under the Hitlerian régime) has not been notably different from the sort of thing habitual with cabinets at London and Paris.

Closely related is a third distinction drawn by the constitution as between chancellor and ministers, namely, that as to responsibility. Since the suspension of parliamentary government, this has, of course, become only a matter of history. Until that time, however, it had a certain importance. In Great Britain,

3. Responsibility

<sup>1</sup> F. F. Blachly and M. E. Oatman, *op. cit.*, 122.

ministerial solidarity is so far established that, both in theory and in practice, responsibility is indivisible as between prime minister and other ministers; the group is responsible as a unit for whatever is done by one or all, and stands or falls together. Under the Weimar constitution, responsibility was intended to be divided. The chancellor was made responsible for his decisions and acts as to "main outlines of policy," the ministers each for his administration of his own department; speaking broadly, the responsibility of one left off where that of the other began. Here again, however, notwithstanding that on several occasions individual ministers retired under fire but without effect upon the others, the tendency was toward a community of responsibility, on British lines. After all, it was not practicable to keep what the chancellor did and what the ministers did in air-tight compartments. By terms of the constitution itself, chancellor and ministers were "the government." Their functions inevitably gravitated into common channels, and, by and large, the officials themselves must go up or down in unison.

Cabinets of  
the period  
1919-32

Nevertheless, it should not be inferred that even as it stood on the eve of the tempestuous events of 1932-33, the system had settled into the form made classic by the experience of other parliamentary governments. Far to the contrary, the nature of the party situation and the extraordinary complexity of post-war problems tended constantly to shunt the mechanism off on new tangents, and thus to accentuate the differences between the Weimar set-up and its foreign counterparts. Furthermore, if the constitution's authors supposed that they had created a system in which the elements making for stability were properly mingled, they were doomed to be sadly deceived. German republican cabinets have consistently enjoyed—or endured—short and stormy lives. In the 13 years from 1919 to the virtual suspension of parliamentary government in 1932, there were no fewer than 19 cabinets, with an average life of eight months—only two months more than the average for the 24 French cabinets during the same period. The shortest-lived was the Stresemann seven-weeks cabinet of 1923; the longest, the second Müller cabinet, lasting a year and nine months, in 1928-30.<sup>1</sup> As would be ex-

<sup>1</sup> For a complete list of cabinets from 1919 to 1932, with useful statistical data, see L. Rogers *et al.*, "Aspects of German Political Institutions: President and Cabinet," *Polit. Sci. Quar.*, Sept., 1932, pp. 339-344. "Individual ministers and the cabinet as a whole are required to resign only in case of an explicit vote of censure

pected, some of the changes were more apparent than real, involving "a new deal of the same cards rather than a different deck." Thus the 225 posts, in all, in the 19 cabinets were filled by only 79 different men, of whom only 32 held office but once, while one man held in rapid succession no fewer than 14 posts. Of the 79, a total of 44 were members of the Reichstag.<sup>1</sup>

No attempt was made to list the executive departments in the constitution or to fix their number; mention was made of only two *i.e.*, those of Finance and Post Office. By national law of 1919, the president of the Republic was authorized to "call together a national ministry for the conduct of national administration," and under this measure ministries, or departments, have been created, abolished, consolidated, and otherwise altered by the simple method of decree. In line with practice under the Empire, the tendency has been to keep the number small, and in 1931, following the abolition of a Ministry of Occupied Territories, but before extensive changes entailed by the extra-constitutional régime, the list stood at 10.<sup>2</sup> Normally, too, every administrative commission, board, or other agency for which need arose has, as in France, been attached to some one of the departments, rather than erected into an independent establishment after common practice in the United States and to a less extent Great Britain. To describe the internal structure of the departments would not be particularly profitable, especially in view of considerable variations presented and of rather frequent changes—to say nothing of the unsettled condition precipitated by the rise of the Nazi dictatorship. In general, the customary pyramidal form has prevailed, although bureaus or officials with similar status and functions have frequently borne widely dissimilar names. As in most other systems, too, a good deal of overlapping occurs, together with what appears to be occasional illogical placing of particular agencies.

Ministers  
and depart-  
ments

by the Reichstag; resignation cannot be forced merely by rejection of a government bill. Direct votes of censure are rare. . . . The fall of a government is usually brought about only by some major political event, such as an election." O. Koellreutter, in *Encyc. of the Soc. Sci.*, IX, 383.

<sup>1</sup> L. Rogers, *loc. cit.*

<sup>2</sup> Foreign Affairs, Interior, Finance, Economic Affairs, Labor, Justice, Defense, Posts, Traffic, and Food and Agriculture. For the internal structure of each, see *Handbuch für das deutsche Reich, 1931* (Berlin, 1931). A noteworthy Nazi addition to the list was a Ministry for Public Enlightenment and Propaganda, created in March, 1933. See J. K. Pollock and H. J. Heneman, *The Hitler Decrees*, 27-28.

Chancellor and ministers constitute the cabinet, and the general theory is that the ministers shall be heads of departments, serving in their individual capacities as directors of the respective branches of administration and collectively as "the government" of the Reich. Ministers without portfolio have been familiar enough in Great Britain, France, and other countries, and in Germany they have been fairly numerous, being always recognized, moreover, as on a common footing with the rest. On the other hand, there have sometimes been fewer ministers than departments, a single minister acting as head of two, or even more, departments, though never with more than a single vote in the cabinet council. Unlike the British and French prime ministers, the chancellor is not obliged to take a portfolio in order to be entitled to a salary. As a rule, he does not do so. There have, however, been a good many exceptions, as, for example, Stresemann, who was twice both chancellor and minister of foreign affairs, and Dr. Luther, who in 1925-26 was at the same time chancellor and acting head of the two ministries of food and economic affairs.

#### Cabinet functions

From the foregoing account of executive organization, the functions that fell to the cabinet—before others of special character were acquired through the development of dictatorship—are perhaps reasonably apparent. A word of summary may, however, be desirable. Half a dozen main phases are to be noted.

1. Under the conditions described above, the cabinet (the chancellor ostensibly, but in reality chancellor and ministers together) formulated the broad lines of national policy. This it did by discussion and vote, in meetings held privately, as in the case of the British cabinet, and with ordinarily no information given out as to the position taken by individual members of the group, and with, of course, no publication of minutes.
2. The orders, decrees, and other acts of the president of the Republic must in any event be countersigned by the chancellor or an appropriate minister, and as a matter of fact were usually actions which the chancellor, a minister, or in important matters the cabinet as a whole, had initiated. This was true no less of the exercise of the power of federal execution and of the emergency, or dictatorial, powers conferred by Article 48 than of the performance of acts of minor and routine importance.
3. The cabinet had large ordinance-making power of its own, including authority—as in

the case of the president <sup>1</sup>—to issue both (a) “administrative” ordinances in the nature of regulations or instructions to be observed by administrative subordinates, an authority to be inferred, without special grant, from the very nature of the administrative process, and (b) “legal” ordinances, having the force of law upon the people generally, and authorized either in the constitution <sup>2</sup> or by legislation of a character very well illustrated by a famous series of emergency acts of 1921 which gave the cabinet almost a blanket grant of ordinance power. 4. While the Reichstag might initiate legislation, the cabinet was charged with formulating and introducing bills; and as a matter of practice, most legislation was originated in this way. Any bill which an individual minister desired to present to the Reichstag or Reichsrat must first be submitted to the cabinet as a whole for consideration and decision, and, once endorsed, must be supported by the cabinet unanimously. 5. The cabinet, acting either directly as a body or through authority delegated by it to individual members, supervised the administration of the many national laws which, as we have seen, were, until 1932–33, enforced by the officials of the *Länder*. This it did, not only by issuing general instructions, but by sending commissioners to the *Länder* and by admonishing the *Land* authorities to remove obstacles or correct delinquencies reported. 6. The cabinet had an absolute veto upon *Land* legislation for the socialization of natural resources and economic undertakings, in so far as such laws could be regarded as affecting the welfare of the Reich as a whole.<sup>3</sup> All told, cabinet powers, both as conferred in the fundamental law and as developed in practice, were ample.<sup>4</sup>

German experience with matters of civil service reaches farther into the past than that of most other Western states of first rank. At a time when England was still working out a solution to the problem of the relations of crown and Parliament, when France was governed by the caprice of monarchs and the sycophancy of courtiers, and when the American colonies had not

The civil service: early development

<sup>1</sup> See p. 709 above.

<sup>2</sup> *E.g.*, Art. 179.

<sup>3</sup> Art. 12. Cf. Arts. 7, 13.

<sup>4</sup> For a fuller analysis of them, see F. F. Blachly and M. E. Oatman, *op. cit.*, Chap. v, and H. Finer, *op. cit.*, II, Chap. xxv.



yet thought of revolting against the British crown, the larger German states had already found means of attracting people of unusual intelligence, ability, and loyalty into government employment.<sup>1</sup> Localism and surviving feudal pretensions gave way to centrally directed state administrations controlling coinage, revenues, and expenditures, regulating trade and industry, and even dealing with problems of education and poor relief. In Prussia especially, the civil service became the central nexus which bound the various parts of the kingdom together—a connection made still closer in the seventeenth century by the creation of a national army. As much as 200 years ago, the Prussian service was being gradually professionalized by the introduction of formal examinations as a basis of recruitment; and inasmuch as a thorough knowledge of law was the attainment chiefly sought in candidates, the universities early became, as they have ever since remained, the principal training grounds for government officials.

Development on these lines was not, however, without its drawbacks, and at an early period criticism began to be directed against the bureaucratic character of the service. Early in the nineteenth century, Baron von Stein (although himself, as minister-president, part of the system) wrote: "*We are governed by paid, book-learned, disinterested, propertyless* bureaucrats. . . . These four words contain the character of our and similar *spiritless* governmental machines: *paid*, therefore they strive after maintenance and increase of their numbers and salaries; *book-learned*, that is, they live in the printed not the real world; *without interests*, since they are related to no class of citizens of any consequence in the state, and are a class for themselves—the clerical caste; *propertyless*, that is, unaffected by any changes in property. It may rain, or the sun may shine, taxes may rise or fall, ancient rights may be violated or left intact, the officials do not care. They receive their salary from the State Treasury and write, write in quiet corners, in their departments, within

<sup>1</sup> "The civil service represents the most traditional aspect of German political life. In fact, an appreciation of its nature and its growth is as essential to an understanding of German political life as is an appreciation of the nature and growth of Parliament to an understanding of English political life." C. J. Friedrich, in *Amer. Polit. Sci. Rev.*, Apr., 1933, p. 201. For a thorough survey of the early civil service in the leading German state, see W. L. Dorn, "The Prussian Bureaucracy in the Eighteenth Century," *Polit. Sci. Quar.*, Sept., 1931, and Mar. and June, 1932.

specially-built locked doors, continually, unnoticed, unpraised. And then again they educate their children for equally useful State-machines. . . . There is the ruin of our dear Fatherland: bureaucratic power and the *nullity of our citizens*.”<sup>1</sup> Plenty of similar opinions could be cited, down through the nineteenth century, when, to be sure, Prussian administration was everywhere held up as a model of efficiency, yet in the same breath criticized for its rigidity, pedantry, and arrogance.

On account of the fact that the administration of national laws was left largely to the states, the federal civil service under the Empire of 1871 was decidedly small, numbering indeed in 1913 only 19,200 persons, exclusive of “workers.”<sup>2</sup> Civil service organization and regulation were, therefore, a concern mainly of the states; and to Prussia it fell, by reason of her historical primacy in developing a thoroughgoing system, as well as because of her physical and political preponderance, to fix in the main the forms and standards adhered to throughout the country. Stated briefly, the principal characteristics of the Prussian service by 1914 were as follows: (1) organization in lower and higher grades or compartments, with practically no opportunity for the employee to break through the wall separating the inferior from the superior service; (2) recruitment, chiefly from the upper and upper-middle classes of society, by examination based on a course of at least three years in law and political science at a university; (3) as preparation for appointment in the higher service, a lengthy period—in stages aggregating from three to four years—in “preparatory service,” *i.e.*, as a sort of apprentice in offices of local authorities in the municipalities, “circles” (or counties), and districts; (4) ultimate admission to the higher service on the basis of a rigorous final examination, oral and written; (5) appointment with guarantee of permanence so long as the appointee conducted himself properly and was efficient, and on the assumption that he would make public service a life career; (6) abstention from political activity, except voting (and one may add that the civil servant was invariably expected by the government to “vote right”); (7) good pay, and considerable social prestige for persons who, in the main, were already of the socially superior classes.

Aspects in  
the early  
twentieth  
century

<sup>1</sup> Quoted in H. Finer, *op. cit.*, II, 1211.

<sup>2</sup> As compared with a total of some 1,500,000 state functionaries.

Status under  
the Weimar  
constitution

When the Weimar Assembly of 1919 took stock of the national situation with a view to finding what elements of the old governmental system could be salvaged, the civil service was placed high in the list. Not only did it soon become apparent that the service had nothing to fear, but nearly all of the political groups showed concern and respect for it and sought its support. As the country's most effective instrument of government and most notable contribution to the development of the science of government, it was without question to go on. Into the new constitution were written, to be sure, certain provisions designed to place the service on a more democratic basis; all citizens, "without distinction," were declared eligible for public office "in accordance with the laws and according to their capabilities and achievements," and all discriminations against women were abolished.<sup>1</sup> Furthermore, it was stipulated that incumbents of public positions should be "servants of the whole community and not of a party," which, however, was not construed to debar them completely from participation in politics; and supplementary legislation made it plain that they were under no circumstances to involve themselves in violent opposition to the state, whether by engaging in strikes or by taking part in revolutionary movements. These restrictions once laid down, however, they were given, in the constitution itself, a grant of fundamental rights under which (1) they were to be appointed for life, unless otherwise provided by law, (2) their "vested rights" were to be inviolable, (3) removals, suspensions, and transfers to posts carrying less pay were forbidden except "on the conditions and in the form provided by law," (4) a right of appeal from all disciplinary sentences was guaranteed, along with a right to inspect one's own efficiency record and to present one's side of the case before any derogatory entry was made, (5) freedom of opinion and liberty to form organizations were granted, and (6) the state was made to accept full responsibility for injuries done to a third person in the execution of official authority.<sup>2</sup>

In pursuance of these principles, civil servants under the Weimar régime were encouraged to discard their old attitude of aloofness and superiority, to cultivate broad political, economic, and social interests, and not only to give free expression to their

<sup>1</sup> Art. 128.

<sup>2</sup> Arts. 129-131.

political opinions (so long as not communistic), but to take an active part in political life. Matters did not, however, go as well as had been hoped. Large and influential organizations of civil servants which now sprang up rather accentuated previously existing jealousies among different groups than the reverse. Strikes of public employees, although forbidden, nevertheless occurred from time to time.<sup>1</sup> Democratization of the service proved more a theory than a fact, for the reason (if no other) that the conditions of admission to the upper levels were too exacting, and entailed too much expense, to be met by any except the sons of the well-to-do. Loyalty to the new political order was perceptibly weakened by measures, beginning in 1924, by which, for purposes of economy, salaries were cut, employees were discharged wholesale as they might have been in private industry, and officials ostensibly protected by law were removed against their will from active service and placed on meager pensions. More and more, the service was dragged into the arena of party politics, not only by its own sometimes too ardent participation, but by interference with it on political lines launched by different parties animated by grave, although no doubt convenient, misapprehensions as to the proprieties of parliamentary government.<sup>2</sup>

It was inevitable that the civil service and the National Socialist party should clash when the latter came to power. On the one hand, the bulk of the civil servants were identified with other parties, and indeed after 1929 Hitler's party had been bracketed with the Communists as an organization with which, on account of its subversive tendencies, civil servants should have nothing to do. On the other hand, Hitler himself had carried over from early life a deep-seated prejudice against the public service; too few civil servants had found their way into the Nazi camp; too many were "non-Aryans"; and in the eyes of the people who rose to control in 1933, the service was com-

"Restoration" at the hands of the Nazis

<sup>1</sup> F. F. Blachly and M. E. Oatman, "German Public Officers and the Right to strike," *Amer. Polit. Sci. Rev.*, Feb., 1928.

<sup>2</sup> The principal accounts, in English, of the German civil service prior to its restoration" at the hands of the Hitler government in 1933 are H. Finer, *op. cit.*, I, Chaps. xxviii, xxx, and xxxiv-xxxvii, *passim*; F. F. Blachly and M. E. Oatman, *ib. cit.*, especially Chaps. xi, xii, xv, xvi; and C. J. Friedrich, "The German and the Russian Civil Service," in L. D. White, *The Civil Service in the Modern State*, 383-55; and an excellent brief characterization is P. Kosok, *Modern Germany; A Study in Conflicting Loyalties* (Chicago, 1933), Chap. viii.

pletely infected with, and indeed a main bulwark of, the hated Weimar system. On the basis of the Enabling Act of March 24, 1933,<sup>1</sup> the Hitler government therefore proceeded to "restore" the service. To the date of writing (February, 1934), two major "cabinet acts" relating to the matter have been issued, with a comprehensive civil service law understood to be in prospect. The first of the two acts, under date of April 7, 1933, was directed chiefly to purging the service of personnel regarded by the Hitler government as objectionable; the second, promulgated on June 30 following, amplified its predecessor somewhat, without making as much advance in the direction of a general law as had been anticipated. To be dismissed from the service, under terms of the earlier act, were: (1) officials and employees who (through favoritism or other looseness in the Weimar system, it was charged) had entered the service since November 9, 1918, "without possessing prescribed or customary training or other qualifications for their career"; (2) officials who were not of "Aryan descent," unless they had been in the service since pre-war days or had fought in or otherwise incurred sacrifice on account of the World War; and (3) officials who "because of their previous political activity" did not offer security that they would "exert themselves for the national state without reservations." Under the first of the three provisions, few removals actually were made; under the second, there were numerous dismissals of Jews; under the third, a Damocles' sword was hung above the head of every civil servant not openly a supporter of the Nazi régime, and many removals, in all ranks, took place. If officials whose separation from the service was desired could not be brought into any of these categories, a further provision of the act opened a way for summarily demoting them or retiring them on pension; and many were edged out of active connection in these ways. A supplementary order decreed the discharge of all members of the service who had "participated in communistic activities," even though no longer holding membership in the Communist party.

The second of the principal acts referred to, under date of June 30, 1933, in its turn reiterated the exclusion of "non-Aryans"; specified marriage to a person of non-Aryan descent as a further disqualification; set up a minimum age requirement

<sup>1</sup> See p. 780 below.

of 35 for women "appointed national officials for life"; made women liable to dismissal whenever their economic status appeared to be "permanently secured because of a family income," *i.e.*, as a result of marriage; reaffirmed in more positive language the eligibility for appointment to the national service of only persons (a) having "the prescribed education or customary training" or "special qualifications for the office," and (b) guaranteeing that they would at all times "support the state of the National Revolution without reservation"; and capped the scheme by stipulating that all of these regulations should apply to the civil services of the *Länder*, of local communities, and of "the other bodies, institutions, and foundations of public law" equally with that of the nation.<sup>1</sup>

It is hardly necessary to say that the rise of the National Socialists to power, followed by promulgation of the foregoing regulations, cut the ground from under the entire civil service as Germany had known it in both imperial and republican times. A competent German authority has estimated that up to the end of 1933 not more than 10 per cent of the personnel of the national service was actually removed.<sup>2</sup> However that may be, and however few or many removals may have taken place subsequently, two facts stand out incontrovertibly—first, that the entire service, national and local, was transformed almost overnight (in so far as dictatorial decrees could accomplish it) into a subsidiary and agency of the National Socialist party, all civil servants being expected thenceforth, on penalty of removal, to regard themselves as Hitler's "soldiers in plain clothes"; and second, that the service, in all of its branches, was thrown into a state of general demoralization. Large numbers of officers and employees who had been neutral in political matters suddenly found that they must at least pay lip-service to a régime of which they disapproved; fear of arbitrary removal, in a time of widespread unemployment, gripped all but the most sycophantic; distrust and uncertainty undermined efficiency and morale. What lay ahead, no one at the date of writing could say. Everything depended upon the permanence and later policies of the National Socialist government. Suppression of all political

Some effects

<sup>1</sup> The more significant portions of these measures are reproduced in J. K. Pollock and H. J. Heneman, *The Hitler Decrees*, 21-27.

<sup>2</sup> F. M. Marx, in note to be published in the *Amer. Polit. Sci. Rev.*, June, 1934.

parties except the dominant one might eventually ease matters for a bureaucracy long disturbed by conflicts of competing loyalties; a civil service in a one-party state might conceivably attain in a new degree that stability which is essential to the frictionless functioning of the public services as instruments of government. In the meantime, however, the conversion of a service which had borne no part in creating the new political order into an army of "trustworthy and tried fighters of the national front" in support of that régime had shattered the foundations upon which the service formerly rested and created a situation which, whatever the outcome, could be trusted to leave its mark for generations upon German civil service ideals, methods, and procedures.

## CHAPTER XXXIII

### PARLIAMENT—AN EXPERIMENT IN POPULAR GOVERNMENT

Only late, and with great difficulty, did Germany arrive at anything approaching genuine parliamentary government. Popular election of legislative bodies was introduced in most of the states during the second quarter of the nineteenth century, and a popularly chosen national legislature, first authorized in the constitution of the North German Confederation of 1867, became, in 1871, the well-known Reichstag of the imperial period. In the states, however, the suffrage was as a rule highly restricted; in Prussia, the three-class system left most of the voters with little actual electoral power; every state except three was a monarchy; nowhere did ministers recognize responsibility to any representative body. In the Empire, too, as we have seen, although arrangements for the suffrage were reasonably liberal, ministerial responsibility was unknown and the Reichstag, as a German writer has put it, was allowed merely "to bark but not to bite." Great Britain, France, Italy, Belgium, the Netherlands, Switzerland, and in fact nearly all of Europe west and south of Germany and Austria-Hungary had the forms, and much of the reality, of popular government at a time when Germany was an almost unbroken scene of absolutism, oligarchy, and bureaucracy.

The hard  
road to par-  
liamentary  
government

From far back in the nineteenth century, voices were raised in protest, and the last two decades before the World War witnessed a swelling liberal movement, which, stimulated by the hardships and disasters of the war years, swept from triumph to triumph in the hectic summer and autumn months of 1918. So far as paper decrees and promises could make it so, popular government was a reality even before the Armistice. Paper decrees and promises, however, proved unavailing; what remained of the old régime crashed to destruction; and the forces (mainly the Social Democrats) which so long had fought for a new political order took command. On a virtually clean slate, the



Weimar liberal coalition proceeded to write a new fundamental law; and the easiest decision that it had to make was that the government should thenceforth be built around a great central democratic parliament through whose legislative activities the will of the nation should be translated into law, and by whose control over the cabinet the processes of administration should be made subject to popular check and restraint. From being a merely tolerated fifth wheel, the Reichstag became a fly-wheel, to which the entire mechanism of government was geared, and by which it was to be kept in balance.

Loss of the  
ground  
gained

Thirteen years passed, and the wheel—already slowed down by growing friction—was stopped. Executive authority, acting at first under emergency provisions of the constitution, took the lever. Later, in the form of undisguised dictatorship, it pushed the constitution aside and repudiated all connection with “parliamentarism.” Though a “discredited instrument of a futile democracy,” the Reichstag was for the time being allowed to meet at lengthy intervals, for a few hours only, to place the stamp of approval upon dictatorial policies. But early in 1934, the Reichsrat was abolished outright; and under the new national constitution for which the Nazis were avowedly preparing, the Reichstag itself seemed likely to suffer the same fate. The diets of all of the *Länder* having been suppressed indefinitely, representative government in Germany was, therefore, to all intents and purposes dead when these lines were written. That somehow, sometime, it would be revived, one could find faith to believe. But that it had never taken root as firmly as the world had supposed was even more of a certainty. Whatever the future holds in store, the experiment with parliamentary institutions under the Weimar system offers the student of popular government a peculiarly interesting and instructive chapter; and to that matter we now turn.

The question  
of one house  
or two

Taking for granted a broadly-based Reichstag, the makers of the Weimar constitution in 1919 nevertheless had one difficult question to face as to the structure of the new parliamentary system. Should there be a second chamber, and if so, how should it be composed, and how nearly coördinate with the Reichstag should it be made? On this, there were decided differences of opinion. To begin with, there were those who, viewing the col-

lapse of the old Bundesrat with undisguised satisfaction, considered that there should be no second chamber at all. Like the British Labor party, they believed that a single house, directly representing the electorate, would make not only for undiluted popular government but for unity, dispatch, and economy—considerations which induced at least five other countries, *i.e.*, Yugoslavia, Estonia, Latvia, Lithuania, and Finland, when adopting new constitutions in this same period, to provide for a strictly unicameral system.

The great majority of delegates, however, did not subscribe to this policy, and from their ranks three principal plans were brought forward. The first, favored by the Preuss Commission, looked to a straight bicameral system, somewhat on the order of that in France, with a senate elected by the state legislatures. After all, despite the greater centralization planned, the states were not to be blotted out; and according to this view it would be wise to give them representation as such in a branch of Parliament, entrusted with no such powers as the old Bundesrat to be sure, yet enjoying substantial parity with the Reichstag. A second proposal looked also to a second chamber representing the states—or at all events the state governments. But, given pause by the spectacle of a powerful French Senate (to say nothing of the old German Bundesrat), those who supported it wanted a second chamber that should be relatively weak, *i.e.*, “secondary” as well as “second,” on lines eventually adopted in such other countries as Austria, Poland, and Czechoslovakia. Still a third plan, favored by groups of both right and left, called for a second chamber made up on a functional, or professional, basis. Conservatives who advocated this were thinking only of the intellectual and business professions; but Majority Socialists who spoke for it envisaged a chamber of a strictly economic character, with members chosen from all organized branches of industry, and with power to initiate all bills dealing with economic matters and to refer to a popular vote all measures passed by the Reichstag, or “political” chamber. The central groups, whose support was necessary for the adoption of any plan, proved not unsympathetic toward functional representation in principle. They believed, however, that the second chamber should be equally “political” with the Reichstag, and should give representation to the states, while functionalism should

Various  
plans pro-  
posed

find expression, not in a branch of Parliament directly, but in a national economic council, auxiliary to Parliament. In the end, this view prevailed. A system of economic councils was provided for;<sup>1</sup> a Reichsrat, representing the governments of the states was created; and, neither the mass of delegates nor the people at large being in a mood to sanction extensive powers for a body not chosen directly by the people, the second chamber was assigned functions not only unlike those of most upper houses in the past, but so restricted in scope that some people, including German writers, prefer to think of the system as to all intents and purposes unicameral.<sup>2</sup>

Electing the  
Reichstag:

1. The suffrage

Throughout Central Europe, millions of men and women first became voters when the post-war constitutions were adopted, and nowhere was the principle of democratic suffrage accepted more unreservedly than in Germany. Before the war, only men 25 years of age and over were Reichstag electors. For a generation, however, the Social Democrats had advocated universal suffrage at the age of 20; and in the Weimar Assembly (itself chosen on this basis) it was decided with no great amount of controversy that the Reichstag should thenceforth be elected by "universal, equal, direct, and secret ballot by men and women over 20 years of age."<sup>3</sup> At a stroke, the electorate was considerably more than doubled. Elsewhere, only Austria, Turkey, and Soviet Russia fixed the voting age as low as 20,<sup>4</sup> and in the first of these countries the figure was changed to the more usual 21 in 1929. In Germany, voting at 20 has been opposed by certain parties of the Right, which have repeatedly offered amendments raising the requirement to as high as 24 years, or even the original 25. Parties such as the National Socialists and the Communists which recruit heavily from the younger elements of the population have, however, upheld the existing law, with the result that the electorate continues to include many young men and women who have not attained their legal majority. There are, of course, disqualifications. Paupers and bankrupts are no longer excluded as before 1919. But persons under guardianship, in asylums, or in prisons may not vote; nor

<sup>1</sup> See p. 685 above.

<sup>2</sup> See, for example, H. Kraus, *The Crisis of German Democracy*, 137; and H. Oppenheimer, *The Constitution of the German Republic*, 49.

<sup>3</sup> Art. 22.

<sup>4</sup> Eighteen in the case of Russia.

persons deprived of their political rights by judicial process; nor soldiers and sailors in active service. It is necessary for the voter to be registered, but no single uniform system of registration has been developed.<sup>1</sup>

In the earlier stages of the Hitlerian dictatorship, it was understood to be the government's purpose to disfranchise all women, and indeed all other persons except "Aryan men able to bear arms." Up to the time of the Reichstag election of November 12, 1933, this, however, had not been done, and the tremendously heavy endorsement of the government's policies accorded on that occasion was given by an electorate composed on the original lines. By 1934, it was uncertain whether there would be formal changes in the suffrage laws, since with the diets of the *Länder* closed out and the Reichstag itself facing the same fate, electoral laws of any nature seemed about to become superfluous.

For a country in which parliamentary powers were as scant Non-voting as in Germany before the war, the proportion of registered voters who went to the polls (never below 60 per cent between 1886 and 1912, and rising to 84.9 per cent in the last-mentioned year) was high—quite as high, in fact, as in Great Britain and France. The Reichstag of those days may not have been the center of political gravity, but it stirred interest as an organ of protest. The record under the Republic has been good, but hardly better—save in the sense that, whereas in Great Britain and the United States the first trials of woman suffrage produced a heavy slump, no falling-off in Germany is traceable to that source. The election of the Weimar Assembly brought 82.68 per cent of the registered electorate to the polls; the Reichstag elections of 1920, May, 1924, December, 1924, and 1928, drew from 75.5 to 79.2 per cent; that of July, 1932, 84 per cent; and that of November, 1933 (with endorsement of the Hitler government's policies as the issue), nearly 95.5 per cent.<sup>2</sup> Absent voting, not

<sup>1</sup> All these and other matters were covered in a great *Reichswahlgesetz*, or electoral law, of April 27, 1920, issued in a new edition on March 6, 1924. Texts in *Reichsgesetzblatt*, I, No. 20, pp. 173 ff., and F. F. M. von Bieberstein, *Verfassungsrechtliche Reichsgesetze und Wichtige Verordnungen*, 215-297.

<sup>2</sup> For fuller information on this matter, see H. F. Gosnell, *Why Europe Votes*, Chap. iii, and R. H. Wells, "Non-voting in Germany," *Historical Outlook*, Oct., 1928. The *Handbuch für das deutsche Reich* (Berlin, 1931), 6-7, contains pertinent statistics.

originally provided for, has later been given a place in the system. Armed with a *Stimmschein*, or electoral certificate, an elector can vote anywhere he happens to be, so long as not outside of the country. Notwithstanding the people's generally good record, a scheme of compulsory voting has many times been advocated.

Proportional representation:

a. Single-member districts under the Empire

Beyond prescribing the suffrage arrangements indicated above, fixing the term of Reichstag members at four years, and requiring that elections be held on Sundays or public holidays, the constitution left the regulation of the electoral system entirely to later legislation, save in one very important particular: the elections were to be conducted "according to the principles of proportional representation." In imperial days, Reichstag members—397 in number—were chosen in single-member districts by majority vote. If no candidate in a district received a majority on the first ballot, the electors went to the polls two weeks later and made their choice between the two who had stood highest. Districts, with some 100,000 people each, were originally approximately equal. As time passed, however, they grew highly unequal; for heavy shifts of population, especially from rural sections to towns, were compensated for by no reapportionments whatsoever.<sup>1</sup> Chief sufferers were the Social Democrats, whose desire it had long been to see single-member-district, majority election replaced by a system of proportional representation. And here again, with the assistance of other interested elements, they triumphed at Weimar by procuring adoption of the proportional plan, not only for Reichstag elections, but for *Land* and local elections as well.

b. A proportional plan adopted

As pointed out in an earlier chapter, proportional representation, far from being a novelty, was a familiar electoral device in Europe even before Germany and a long list of lesser states<sup>2</sup> installed it at the close of the World War. It was, indeed, not unknown to Germany herself. Hamburg had used it since 1906 in electing all but eight members of its lower house; Württemberg since the same year in electing not only some members of the lower house but also unpaid municipal councillors; Bavaria from 1908 and Baden from 1910 for electing municipal council-

<sup>1</sup> See p. 659 above.

<sup>2</sup> E.g., Austria, Estonia, Latvia, Lithuania, Poland, Czechoslovakia, and Yugoslavia.

lors generally. The Weimar Assembly had itself been chosen by this method. Several different ways of applying the proportional principle had been developed, both in Germany and elsewhere, and when, late in 1919, the framing of a new national electoral law was taken up at Weimar, it became necessary to decide which was best adapted to the conditions and needs of the time. For electing the Assembly, the so-called D'Hondt plan had been borrowed from Belgian usage. In a number of ways, it, however, had not worked to the general satisfaction. By permitting parties to combine their votes and count the whole for a single list, it handicapped those groups—particularly the smaller and more radical ones—which were not able or disposed to take such a course; it furthermore took no account of “remainders,” which again worked to the advantage of the larger parties. Seeking a better plan, the lawmakers curiously found it nearer home in a scheme which the state of Baden had but lately written into a new constitution; and after publishing, for purposes of sounding out public opinion, three alternative proposals based upon the Baden system, the Assembly—driven at the last to quick action by a ministerial crisis compelling early election of the first Reichstag, adopted, in the electoral law of April 27, 1920, a plan definitely based on that of Baden, although not adhering in all particulars to any one of the three published proposals.

Hailed throughout the world as in many respects the last word on proportional representation, the system as instituted in point of fact steadily declined in favor as experience with it accumulated, and the chances are that it would have been modified in important particulars even if the Nazi régime had not upset it completely. To be sure, the laws upon which it rests have not (to February, 1934) been expressly abrogated. When it is stated, however, that by Nazi decree all political parties in the country except one have been suppressed,<sup>1</sup> and that, should any further Reichstag elections be held, they undoubtedly would proceed on the lines of that of November 12, 1933, when only a single list of candidates was allowed to be placed before the voters in each of the electoral districts, it becomes manifest that all “proportional” features of the system have been eliminated—which is but another way of saying that

But emasculated by the Nazis

<sup>1</sup> See pp. 781–783 below.

the system itself is (at all events for the time being) extinct. As one of the outstanding schemes of proportional representation actually tried in our day, and as a weighty factor in Germany's turbulent post-war politics, the device, nevertheless, merits our attention.

c. The system outlined

The salient features of it can be indicated briefly. First of all, the country was divided (with little reference to state lines) into 35 electoral districts, none with fewer than 1,000,000 inhabitants, and averaging around 1,700,000. Then comes the first surprise, *i.e.*, the fact that no definite quota of seats was allocated to each district, nor any number fixed for the Reichstag as a whole. Instead, the principle was that of "automatic" apportionment which, for purposes of a preliminary broad statement, may be defined as a scheme under which each district received seats, and likewise each party throughout the country as a whole, in accordance with the number of blocks of 60,000 votes each that were polled. In each district, candidates were nominated by the various parties, in lists as lengthy as desired, and usually extending beyond all reasonable expectation of electoral power; and after the votes were cast and counted, the district list of each party was awarded one seat for every 60,000 votes polled for it. Obviously, there would be remainders after the respective party votes were divided by 60,000—remainders that theoretically might run as high as 59,999 votes. In addition, some lists would almost certainly not have attained the quota necessary for a seat. At this point appeared another distinctive feature of the system: all such votes, instead of being discarded, were transferred to some other point where they could help determine the outcome. The point to which they would be transferred in the case of any given party list depended on whether the party managers had chosen, in accordance with an option offered by the electoral law, to associate the lists of two or three districts in a "union" list.<sup>1</sup> If this had been done, the surpluses from these districts would be added together, and, if aggregating as many as 60,000 votes, would become the basis for awarding the party an additional seat. If, on the other hand, no union list had been formed, the district surplus would still not be lost, but instead would be carried to a national pool, consisting of all unused votes of a given party brought up from either the in-

<sup>1</sup> Seventeen such potential combinations of districts were authorized by law.

dividual districts or the unions; and from this the party would receive yet other seats, at the rate of one for every 60,000 votes (plus one for any final surplus of more than 30,000), such seats being allotted to a *Reichslist* selected by the central party management in advance of the election, although nowhere appearing on the ballots.

For the system thus outlined, there is obviously a good deal to be said. In the first place, in sharp contrast with most electoral schemes, it ensured that substantially all votes cast would contribute positively to determining electoral results. Ballots in too slender proportions to be effective at one point were simply carried to another where, combined with others, they would count. If the object sought in making up a legislative body is a faithful reflection of the varieties and proportions of opinion in a country, the system described should, it would seem, come as near to supplying it as any. A second advantage of the plan, which will appeal to American students of politics as of no small importance, is that it obviated the whole problem of reapportioning legislative seats. Perhaps it would be more accurate to say that every election saw a reapportionment, but one that was automatic, on lines determined by the number and distribution of votes, with no changes of district boundaries, and therefore with no shunting off of voters into districts where they were not needed, after the fashion of gerrymandering operations in other lands. Not to be overlooked, too, is the saving resulting from the rule that, in case a member of the Reichstag died, resigned, or was expelled, the vacancy should be filled, not by means of a special election, but by the leaders of the party concerned, who selected for the purpose some person who was on the party list at the last election but failed to be chosen. Much is made by some writers, also, of the alleged advantage of the national list, on the ground that it opened up a way by which able men who for temperamental or financial reasons would shrink from seeking election in the districts, or perhaps would have small chances of success at the polls, could nevertheless be brought into public life. There is something to the point; on one occasion, Stresemann himself obtained a seat only in this way. What more commonly happened, however, was that the principal party leaders placed their own names on the national list, with a view to making their election reasonably certain and at the

d. Advan-  
tages of the  
system



same time securing freedom to devote themselves during the campaign to the larger concerns of party generalship.<sup>1</sup>

e. Disadvantages

Notwithstanding its attractiveness from many points of view, the system was, however, open to criticism on several grounds; indeed, a decade of trial left it exposed to vigorous attack not only from dissatisfied political groups, but from impartial students of electoral problems.<sup>2</sup> To start with minor, and more easily remediable, faults: first, the flexible plan of allotting seats caused the Reichstag to become too large for the most effective performance of its work. The number of seats under the Empire was 397. Under the Republic, it started at 459 after the initial election of 1920; rose to 472 and 493, respectively, after the two 1924 elections; reached 577 after the election of 1930, 607 after that of July and 575 after that of November, 1932; and touched new levels in 1933, when the figures after the March and November elections were, respectively, 648 and 661. The obvious remedy, *i.e.*, to increase the electoral quota from 60,000 to a higher figure, was often proposed, but without result. A second shortcoming arose from the circumstance not only that (as already mentioned) the device of the national list failed to bring into the

<sup>1</sup> The aggregate number of seats filled at each election from the several national lists was larger than might be supposed. In 1928, 75 of the 491 members elected were chosen in this way, and in 1930, 91 out of 577. The lists of the larger parties would probably have yielded most heavily in any case, but it is worth observing that the law contained a provision which put small parties at special disadvantage in the matter, *i.e.*, that no party might obtain on the basis of its national list more seats than it had already won in the various districts and unions. The curious results that sometimes arose from this restriction are well illustrated by the experience of two minor parties in 1928. With a total of 481,254 votes, the *Deutsche Bauernpartei* secured eight seats, five in the districts and three from the national list. With a total of 483,101 votes, so scattered throughout the country that its highest poll in a single district was only 42,099, the *Volksrechtspartei* managed to secure one seat by combining votes in a union, and was thus limited to one additional seat from the national list—a total of two, as against eight, although the popular vote was larger. The actual basis on which seats were won by the principal parties in the 1928 election appears from the following table:

PARTY	TOTAL	DISTRICT SEATS	UNION SEATS	NATIONAL LIST SEATS
National People's	73	57	6	10
National Socialist	12	2	4	6
People's	45	28	8	9
Center	62	46	10	6
Democrat	25	7	9	9
Social Democrat	153	135	8	10
Communist	54	35	13	6

<sup>2</sup> See, for example, H. Kraus, *The Crisis of German Democracy*, 137-154.

Reichstag non-politicians of conspicuous ability, but that it led to the election and seating of large numbers of candidates (upwards of a fifth of the entire membership on one or two occasions) who had been before the voters only in the qualified sense that when the latter went to the polls they knew that if they supported a given party, such seats as might accrue to it from its national pool would be assigned by the leaders from the party's published national list. In the third place, notwithstanding provisions of the law designed to discourage the growth of *Splitterparteien*, or "splinter" parties,<sup>1</sup> the proportional system unquestionably contributed to "balkanizing" the political structure by leading the people to divide into considerably larger numbers of parties than existed under the Empire, or even at the beginning of the Republic. "In the elections to the Weimar Assembly, 10 party lists secured representation and 19 did not; in the Reichstag elections of May, 1928, 15 parties secured representation and 23 did not; and in the Reichstag elections of September, 1930, 16 parties secured seats and 21 did not. In a decade, therefore, the parties represented in the German legislature increased by more than 50 per cent and the number offering lists in the elections increased by more than 27 per cent."<sup>2</sup> It would be fallacious to attribute this unfortunate development exclusively to proportional representation. The same thing has happened, however, in other central European countries which have adopted the proportional plan, and the association of over-multiplied parties with the plan is much too recurrent to be accidental.

More fundamental than any of these objections was the impersonal character of the elections and the almost mechanical rôle assigned the voter. To begin with, in the matter of selecting candidates, the law started off by requiring that a party list in a district should be put forward by not fewer than 500 electors, but ended weakly by allowing it to be entered by as few as 20 signers, provided "credible" evidence was furnished that as many as 500 electors were prepared to support it. The 20 signers were almost invariably party leaders, who alone decided who

Voting for  
parties and  
not for men

<sup>1</sup> E.g., the rule, mentioned above, precluding a party from being allotted any seats at all unless it was strong enough to elect one or more candidates in the districts or unions.

<sup>2</sup> A. J. Zurcher, *The Experiment with Democracy in Central Europe*, 85-86.

the candidates were to be. In the next place, the electoral campaign was directed entirely to persuading the voters to support the party; the candidates, as individuals, were nowhere featured. Still further, when the voter went to the polls, the ballot which he received bore, not the full list of candidates, but only a number and the names of the first four, as arranged again by the party leaders.<sup>1</sup> Finally, the elector must accept the list as it stood and vote a "straight ticket," voting indeed not for individuals at all but only for the "bound" list, or, to all intents and purposes, for the party. If he struck out a name or tried to indicate a different order of preference, his ballot was regarded as defective. To be sure, the voters in European countries generally—even in Great Britain—have relatively little to do with the selection of candidates; party managers, great or small, commonly attend to that. Even in the United States, complaint on similar lines is often heard. There is hardly another country, however, except Fascist Italy, in which party control so completely frustrates electoral freedom on the part of the ordinary voter as in the case of republican Germany. Certainly there is none (with the same exception) in which the voter has so little opportunity to make choices among individual candidates presented. It was at this point that the severest criticism of the system arose, both from Germans and from foreign observers; and to break the power of the machine and at the same time reestablish some vital personal connection between candidate and voter, many thoughtful Germans were prepared to do away with the proportional system altogether and restore the single-member-district plan. Without going this far, something might have been gained by reducing the size of the districts and by applying the principle of the single transferable vote on lines favored by advocates of proportional representation in Great Britain.<sup>2</sup> Most of those having to do with party management, however, stoutly opposed any such change, even though "not parties, but men, is what the people want to see: men with whom they may argue and in whom they may believe."<sup>3</sup>

<sup>1</sup> A Nazi decree of October 14, 1933, prescribed that the ballots should bear the names of the first *ten* candidates of each list, "together with the statement of the party."

<sup>2</sup> See p. 205 above.

<sup>3</sup> R. von Kühlmann, *Thoughts on Germany* (London, 1932), 152-153. For a plan of electoral reform submitted to the Reichsrat by the Brüning government in 1930,

In a decade during which the gravity of national problems called loudly for the fullest coördination of effort, the Reichstag was divided sharply on party lines, and on the whole not very effective. Viewed as individuals, the membership was respectable but not distinguished. Lawyers were few (in 1930, no more than 15 members were listed as such)--fewer even than in the British House of Commons, and far fewer than in the French Chamber of Deputies and in American legislatures. On the other hand, members who were at the same time officials of *Land* or other governments were numerous; in 1930, there were no fewer than 150 such. Most numerous of all were business and professional people, including in 1930 at least 100 who were listed as writers or editors or both. Contrary to the situation in France, the various trades had plenty of spokesmen (some 80 in 1930), along with a considerable sprinkling of trade-union officials. In general, the great industries and other major economic enterprises were well represented--so well, indeed, that that familiar figure of American legislative halls, the lobbyist, found little demand for his services and was but rarely seen. The dominance and discipline of party, so manifest at election time, habitually carried over intact into the chamber; and though the constitution stipulated plainly that the members should be "subject only to their own consciences" and "not bound by instructions,"<sup>1</sup> there is hardly another legislative body in Western Europe in which voting is so uniformly on lines predetermined by party decision. The closest approach is perhaps the British House of Commons, with the French Chamber of Deputies at the opposite extreme. Any Reichstag member failing to vote on an important question with members of his group was liable to expulsion from the party.

✓ divided  
and not very  
strong  
Reichstag

✓ However far it may have fallen short, the Reichstag was designed to occupy a position of great power and prestige. To it, the chancellor and ministers were expressly made responsible, with all the implications of control that go along with such an arrangement. To it, further, was assigned the general function of making laws for the Reich. There nevertheless was no intention to make it an absolute arbiter of the nation's destiny. In point

The Reichstag's constitutional powers and limitations

see *Nat. Munic. Rev.*, Nov., 1931, pp. 669-670. The standard work on the electoral system is G. Kaisenberg, *Die Wahl zum Reichstag* (4th ed., Berlin, 1930).

<sup>1</sup> Art. 21.

of fact, notwithstanding its high claim as a body directly representing a democratic electorate, it was hedged about with numerous important restrictions. In the first place, although members of the Reichstag might themselves introduce bills, there were other sources from which measures might come, and the initiative exercised by the Reichstag was in practice not very extensive. As in other parliamentary systems (particularly the British), the government formulated and introduced the bulk of important legislative proposals, and also found means of securing for them favored positions on the calendar. In order to appear on the calendar at all, private members' bills must be endorsed by as many as 15 deputies<sup>1</sup>—a rule which had the merit of preventing petty minorities from harassing the committees with a plethora of proposals doomed to defeat, yet also one which further illustrates the utter subordination of the individual deputy to the party or group. Bills might originate in still other ways. The Reichsrat might request the cabinet to introduce a measure in the Reichstag, and the request must be fulfilled, even though in presenting the measure the ministers might express their own disapproval of it. Under the provisions for popular initiative, bills might be originated by the people, and again must be submitted to the Reichstag. Finally, they might come from the National Economic Council, once more being transmitted by the cabinet. The upshot was that, as indicated above, the Reichstag did not itself originate any large proportion of the projects upon which its time and efforts were expended.

Other restrictions were no less important. One was the power of dissolution, which, contrary to the situation in France, was used vigorously. Another was the extensive ordinance power of the executive, together with the so-called dictatorial powers conferred in Article 48. A third was the right of the Reichsrat to object to measures as passed by the Reichstag, with consequences to be noted later. A fourth was the check provided by the popular referendum. A fifth, of at least potential importance, was judicial review. Under normal conditions, these checks and restrictions would not have been expected to rob the Reichstag of essential preëminence in the governmental system. Under

<sup>1</sup> This was the minimum number which the rules recognized as constituting a parliamentary group.

the circumstances existing after 1929, however, they (or certain of them) were taken advantage of to reduce it to impotence, and indeed to threaten its very existence.

No one acquainted with the Weimar constitution's propensity for full and detailed provisions would be surprised to find in the instrument numerous stipulations as to how the Reichstag should be organized and how it should carry on its work. As for sessions, the principal requirements were (1) that the body should meet every year on the first Wednesday in November, (2) that it should be convened at other times on request of the president of the Reich or of as many as one-third of the members, and (3) that any newly chosen Reichstag should meet within 30 days after its election. Proceedings were required to be public unless 50 members moved, and a two-thirds majority decided, to close the doors; the body was authorized to make its own rules of procedure; and the customary privileges and immunities of members were guaranteed. Corresponding to the speaker of Anglo-American legislative bodies was a president, elected by majority vote for the duration of a parliament, and endowed with large powers not only as a moderator but as custodian of property and as representative of the Reich in various legal connections. Chosen as a party man, he retained his party character in the chair, participating in debate when he liked and issuing statements on party lines to the press. Until the rise of the National Socialists to power in 1933, the office was filled continuously by Dr. Paul Loebe of the Social Democratic party; and indication of the political importance attached to it is furnished by the fact that one of the first acts of the Hitler dictatorship was to immure Dr. Loebe in a concentration camp for political prisoners. In promoting understanding among the parliamentary groups, arranging the agenda of a session, and deciding many procedural questions, the president was advised and assisted by an *Aeltestenrat*, or Council of Elders, consisting of 21 senior members designated by the groups themselves, in addition to the president's deputies and the secretaries, elected by the Reichstag.

Officers

The committee system bore a good deal of resemblance to that of the French Chamber of Deputies. Two standing committees were required by the constitution—one on foreign affairs and another charged with safeguarding the rights of the Reichstag

Committees

in its relations with the cabinet during intervals between sessions and between a dissolution and the meeting of a new Reichstag.<sup>1</sup> Others were created as required, to a total of 15, each with a membership of 28.<sup>2</sup> Committee members were nominated by the parties in proportion to their strength, with, however, no representation for any group having fewer than 15 supporters. Chairmen were chosen by the committees themselves in consultation with the *Aeltestenrat*; and as a rule the most numerous party was allowed to have the chairmanship of the committee which it considered most important, the second most numerous taking next choice, and so on, by rotation, until the smallest groups entitled to committee representation were reached, whereupon the process started over again. Each party fraction on a committee named an *Obmann*, or chief, who became primarily responsible for promoting the party's interests in connection with the committee's work. There were also special committees, particularly such as were set-up, on demand of one-fifth of the Reichstag, to carry on inquiries and investigations. As in the United States, the bulk of actual legislative work was performed in committee.

How bills  
were handled

In line with English parliamentary tradition, bills were subjected to three readings, with, however, the important difference that committee stage followed the first and purely formal reading, and not the second as at Westminster. This meant that all bills were sent to committee, as in the American Congress, and not merely those that survived second reading as under British practice. In considering a bill, a committee had a free hand; it might report favorably or unfavorably, and with or without suggested amendments. The general public was excluded from sittings, but the initiators of a measure had a right to be present when it was being considered, and any Reichstag member who desired might attend at any time as a spectator. Ministers and department officials might be called before a committee to give information, and though under the rules other outsiders were not

<sup>1</sup> Art. 35. The Committee on Foreign Affairs, likewise empowered to function between sessions and between parliaments, was intended by the constitution's makers to serve as a restraint upon "secret diplomacy."

<sup>2</sup> The list in 1932 was as follows: (1) Maintenance of the Rights of the People's Representatives, (2) Foreign Affairs, (3) Rules of Procedure, (4) Petitions, (5) Budget, (6) Taxation Problems, (7) Commercial Policy, (8) Economic Affairs, (9) Social Affairs, (10) Population Policy, (11) Housing, (12) Education, (13) Justice, (14) Civil Service, and (15) Transportation.

to be admitted, representatives of interests likely to be affected oftentimes waited around outside the committee room to button-hole members when opportunity arose; and indeed the absence of formal hearings was partly compensated by extra-legal "interviews" participated in by committeemen acting in their individual capacities along with experts and others who might be invited to take part. Conclusions having been reached, a report was drawn up and given general distribution, preparatory to debate on second reading. At this point, the curious feature arose that the committee considered its work finished and, as such, took no part in the further consideration of the bill. Neither the committee chairman, as in the American Congress, nor a specially chosen reporter, as in the French Parliament, assumed responsibility for explaining the report and securing its adoption. What happened was rather that each fraction or quota of the committee carried the committee's decision to a caucus of his party, in which, after such discussion as was desired, some person (committeeman or otherwise) was designated to speak for the party when the matter came up in the Reichstag. In accordance with positive instructions given them by the respective party caucuses, these spokesmen supported the report on the floor, opposed it, or urged substitutes or modifications; and as a rule few others, except ministers, took part in the debate. Here again, everything was on a party basis. Normally, the majority party quotas in the committee determined the nature of the report. Normally, also, when the vote on second reading was taken, the majority groups determined the outcome. If matters did not work out so, it was usually only because the government coalition was tottering to a fall.

Debate was expedited by a rule under which speeches were limited ordinarily to one hour. But it might be cut even shorter by closure, which normally took the form of an agreement by majority vote, on motion of the *Aeltestenrat* or of any 30 members, to conclude discussion by, or within, a stated time. The most usual method of voting was by rising. When, however, the result was doubtful, the members retired from the chamber, in the British fashion, and were counted as they returned through one or another of three doors marked, respectively, *Ja*, *Nein*, and *Enthalte Mich*.<sup>1</sup> On demand of 50 members, urns were passed

<sup>1</sup> *I.e.*, abstention.



around instead, each representative depositing a card bearing his name and one of the three terms indicated.

Questions  
and inter-  
pellations

As in France, both ordinary, or "small," questions (*kleine Anfragen*) and interpellations were addressed to members of the cabinet. Once again the submergence of the individual in the group comes to light. For a "small" question—always in writing, and eliciting a reply which was not debatable—must be signed by at least 15 members, and an interpellation by at least 30. In the case of an interpellation, if and when the government indicated that it was willing to discuss the matter dealt with, the subject was placed on the agenda, and when the time arrived, one of the signers explained why the inquiry was made, a spokesman for the government replied, and unless 50 members demanded debate, the incident was closed. If, furthermore, two weeks passed with no attention to the matter from the government, the interpellation might be placed on the agenda notwithstanding. But (and this is the significant feature) no vote was taken in any case, whether or not there had been debate; and thus interpellation, while affording means of criticizing the government and perhaps putting it on the defensive, was no such weapon in the hands of an obstructionist minority as in the French Chamber.<sup>1</sup>

The Reichs-  
rat—nature  
and structure

At an earlier point, we have seen that although the makers of the Weimar constitution decided in favor of a second chamber, the Reichsrat, or Reich Council, for which they provided was to be constructed differently from, and to have far smaller powers than, the Reichstag. In general form, the Reichsrat rather closely followed the old Bundesrat,<sup>2</sup> preserving in the face of growing centralization an element of unmistakable federalism. As in the case of the Bundesrat, each state, or *Land*, was assigned one vote, and more populous *Länder* additional ones, subject in the later instance to the restriction that no *Land* might have more than two-fifths of the total number. The original distribution of additional votes was on the basis of one for every 1,000,000

<sup>1</sup> See pp. 564-566 above. On all matters relating to Reichstag organization and procedure, see the *Geschäftsordnung* of December 12, 1922, as reissued in a revised edition of March 31, 1931. *Reichsgesetzblatt*, 1931, No. 9, pp. 221 ff., and H. Triefel, *op. cit.*, 176-190.

<sup>2</sup> As already indicated, the Reichsrat was formally abolished in February, 1934. It will be described here as it existed from 1919 until that date. See p. 699 above.

inhabitants, with another for any remaining fraction of 1,000,000 if equal to the population of the least populous *Land*;<sup>1</sup> and on this basis Prussia received 25 votes, Bavaria 7, and other *Länder* lesser numbers, to a total of 63. A redistribution was to be made by the Reichsrat in any case, following each general census. But as early as 1920 the joining of seven small *Länder* to form the new *Land* of Thuringia (with two votes) reduced the total of non-Prussian votes by five and brought down the Prussian quota to 22 in order to keep it within the two-fifths limit. In 1921, a constitutional amendment changed the quota entitling a state to an additional vote from 1,000,000 to 700,000 or major fraction thereof; and on this basis Prussia received 27, Bavaria 10, and so on down the list, to a total of 68. A further redistribution following the census of 1925 involved minor changes, without affecting either the total or the Prussian quota.<sup>2</sup>

As in the case of the old Bundesrat, each state was entitled to a fixed number of votes and might send any number of delegates within this limit. Furthermore, whereas formerly the delegates were drawn from officials of the state governments as a matter of usage, the Weimar constitution required that they be such officials in all instances except in Prussia, where one-half were named, not by the government of the *Land*, but by the several provincial administrations. This latter arrangement was designed to decentralize and lessen the power of Prussia in the Reichsrat, an end promoted also by the absence of any provision such as that of imperial days under which Prussia was able singlehandedly to defeat any constitutional amendment in the Bundesrat. The Weimar constitution left the way open also for decentralization in voting; for whereas before 1918 all votes in the Bundesrat to which a state was entitled were required to be cast in an indivisible block, the new constitution said nothing at all on the subject. In the absence of stipulation, differences of opinion naturally arose as to the right of a *Land* government to give its delegates binding instructions as in former times. Usage varied, but the tendency was for delegates to be instructed and bound, and thus to cast all of the votes of their *Land* on the same side of a question, except that again in the case of Prussia

<sup>1</sup> Art. 61.

<sup>2</sup> Prussia, 27; Bavaria, 11; Saxony, 7; Württemberg, 4; Baden, 3; Hamburg, Hesse, and Thuringia, 2 each; and the remaining nine *Länder*, 1 each.

the government at Berlin could control the votes of only the delegates whom it appointed. Prussia actually had a larger proportion of the votes than in the old Bundesrat, *i.e.*, some 40 per cent as compared with 28. But for the reasons given, no such preponderance of power resulted.

The Reichs-  
rat—func-  
tions and  
powers:

It has been made clear that the Reichsrat was intended to be only a pale image of the supremely powerful Bundesrat. At best, its functions were mostly of a negative sort. Briefly, they fell into three main phases according as they had to do with amending the constitution, with legislation, and with ordinance-making. As explained in an earlier chapter, a constitutional amendment might be adopted by a two-thirds vote in both Reichstag and Reichsrat; but if the latter refused assent and within two weeks demanded that the proposal be submitted to the people, the amendment finally prevailed only if the ensuing referendum resulted favorably.<sup>1</sup> The Reichsrat therefore had a suspensive veto, but nothing more.

1. Amend-  
ing the con-  
stitution

2. Legisla-  
tion

In the domain of ordinary legislation, three features are significant. (1) The cabinet was required to submit all of its legislative projects first of all to the Reichsrat, and although it might carry them on to the Reichstag whether the Reichsrat had endorsed them or not, it must, in case of dissent, give the popular body the benefit of the other chamber's views. (2) The Reichsrat might itself initiate measures, which the cabinet, even though disapproving of them, must present to the Reichstag, along with its own opinions. (3) The Reichsrat might raise objection, within two weeks, to a bill passed by the Reichstag; whereupon the measure must again be submitted to the popular chamber to provide opportunity for the difference to be ironed out. If agreement failed, and the Reichstag reasserted its position by a two-thirds majority, the matter was considered to have gone beyond the Reichsrat's reach and the president of the Republic must either proclaim the law or order it submitted to a popular vote. If the Reichstag merely stood its ground by something less than a two-thirds majority, the measure was submitted to the people within three months if the president of the Republic so chose, or, in default of such action, simply perished. Without having it in its power to frustrate any legislation whatsoever upon which the Reichstag was sufficiently determined, the Reichstag

<sup>1</sup> See p. 679 above.

could nevertheless impose checks and delays, compel reconsideration, and create situations calculated to bring direct action by the electorate frequently into play. The power was exercised on a number of occasions (nine times between 1920 and 1928), although in the matter of initiating legislation the Reichsrat seldom went beyond requesting the cabinet to prepare and introduce a bill on a subject in which it was interested.<sup>1</sup>

A third phase of Reichsrat activity had to do with the executive and administrative work of the government. The ministers were, of course, not responsible to the Reichsrat in a political sense, but this did not prevent them from being questioned and interpellated in that chamber. Various kinds of ordinances could be issued only with the Reichsrat's consent, and the body itself had power to issue ordinances on certain aspects of taxation and finance in so far as they affected the mutual interests of the Reich and the *Länder*. Being, indeed, essentially a council of states, it is not strange that the Reichsrat should have acquired, whether by constitutional provision, by statute, or merely by usage, considerable consultative authority in all that pertained to Reich-Länder relations, including the exercise of so-called dictatorial authority under Article 48. Without express legal authority for doing so, the body indeed more than once successfully demanded that objectionable executive ordinances be rescinded. One should not, indeed, be misled by the Reichsrat's secondary rôle into underestimating the true importance of the chamber. In session practically all of the time, composed of experienced ministers and other state officials, equipped with 11 active standing committees with which chancellor and ministers freely consulted,<sup>2</sup> and often made by these officials the vantage point from which to announce major domestic and international policies, the body was—so long as it lasted—perhaps the most vigorous and successful of all of the newer second chambers of post-war Europe. On the few occasions, for example, when a measure, rejected by the Reichsrat, was sent back to the Reichstag, the second chamber was usually sustained.<sup>3</sup> The

3. Ordinance-making

<sup>1</sup> For a summary of the principal instances in which the Reichsrat utilized the powers described, see M. Aubry, "Le Reichsrat dans la constitution allemande," *Rev. du Droit Pub.*, Jan.-Mar., 1932.

<sup>2</sup> At least nine *Länder* were represented on each committee, with Prussia, Bavaria, Saxony, and Württemberg represented on all.

<sup>3</sup> O. Koellreutter, in *Encyc. of the Soc. Sci.*, IX, 382.

principal handicap from which it suffered was the instability inevitably resulting from rapidly shifting coalition governments in the *Länder*.<sup>1</sup>

The Reichs-  
rat abolished  
(1934)

When these lines were written, a Reichstag was still in existence, although inactive and clinging to life precariously. The Reichsrat, however, had lately been definitely suppressed and the several articles of the Weimar constitution relating to it,<sup>2</sup> as well as all germane regulations of a statutory character, in effect erased. The doom of the Reichsrat was, of course, pronounced by the decision of the Hitler government to draw the *Länder* under full national control, preliminary, it is fair to assume, to extinguishing them altogether. The only important reasons for creating such a body in the first place were (1) to provide, in some degree, the check upon legislation which a second chamber, even though weak, is expected to supply, and (2) to carry on the tradition—still too strong to be overborne in 1919—of the representation of the states through their governments in an assemblage functioning in close relation with the national administration in Berlin. With legislation no longer a matter of parliamentary action, and with the governments of the *Länder* (in so far as surviving at all) lodged securely in the hands of Reich authorities, the Reich Council had become a palpably superfluous institution. "There is," said the decree of dissolution, "no longer room for a body equipped with the rights of the Reichsrat." Germany may, of course, see something of the sort again. But for the present this major symbol of a declining federalism has passed from the picture.

Direct legis-  
lation:

1. Why pro-  
vided for

To universal suffrage, proportional representation, responsible ministers, and other supposed guarantees of democratic government, the architects of several of Europe's more recent written constitutions added the popular initiative and referendum. The classic land of these twin devices of direct democracy is Switzerland, where the referendum in its present form originated in the canton of St. Gall as early as 1830 and the initiative in that of Vaud 15 years later. Outside of Switzerland, the United States

<sup>1</sup> The development of the Reichsrat in comparison with other Central European second chambers is treated clearly in A. Zurcher, *The Experiment with Democracy in Central Europe*, Chap. ix.

<sup>2</sup> Chiefly 60-67.

saw the two principles adopted most extensively up to the time of the World War, the first states to authorize the use of them as instruments for the making of ordinary laws being North Dakota in 1898 and Utah in 1900. In the great era of post-war constitution-making, the Slavic states, swayed largely by French viewpoints and traditions, showed little interest in the matter of direct legislation; Czechoslovakia alone made some provision for popular referenda. The Germanic states, however, almost unanimously adopted provisions on the subject—not only the German Reich (which became the largest political unit ever to attempt anything of the kind), but all of the *Länder* within the Reich, Austria and some of its *Länder*, Latvia, Estonia, Lithuania, and the Free City of Danzig.

To be sure, the proposal to empower some minimum quota of the voters to bring forward a legislative proposal with the right to have it submitted to the electorate for acceptance or rejection stirred sharp differences of opinion in the Weimar Assembly. The Preuss plan made no mention of it, and over the opposition of the more conservative elements generally it was finally given a place in the constitution with the full and unqualified support of only the Social Democrats. A main objection was that under a representative system of government such as was envisaged, it was not desirable to raise up a law-making authority that might become a rival of Parliament. The referendum met with far wider favor, being viewed, not as a competitive legislative instrumentality, but rather as a means of promoting true representative government and perfecting its techniques; and virtually all political elements represented in the Assembly united in writing it into the fundamental law. When cabinet and Parliament could not agree, it would be an advantage, so it was argued, to have machinery by which the matter at issue could be sent to the people for settlement; resignations of cabinets would be averted, likewise parliamentary dissolutions, and greater stability of government attained. In the same way, deadlocks between the legislative chambers would be resolved, to the advantage of all concerned. To the more democratic elements the device appealed further as a means of educating the people politically through frequent participation in the work of government, and also of alleviating popular distrust of representative institutions.

## GERMANY

### 2. Constitutional stipulations

In practical use, ~~both initiative and referendum everywhere~~ lend themselves to many variations, qualifications, and complications. The arrangements set up for the Reich under terms of the Weimar constitution can, however, be indicated briefly. As for the initiative, the salient fact is that one-tenth of the qualified voters of the country might by petition bring forward, in fully drafted form, either a constitutional amendment or an ordinary bill, which, upon being laid before Parliament by the cabinet, became law if adopted in the regular manner in the form submitted, but otherwise must be referred to the electorate for final decision.<sup>1</sup> As for the referendum, there were six more or less differing circumstances under which it might be brought into play. (1) At any time within a month after a bill had been passed by the Reichstag, the president of the Republic might, before promulgating it as law, order a referendum on it. (2) If a bill passed the Reichstag, but one-third of the members demanded postponement of promulgation for two months, and if the chambers did not declare the measure urgent, it must be submitted to a referendum if one-twentieth of the voters so requested. (3) A bill upon which the chambers could not agree was referred within three months if the president so decided. (4) As indicated above, a popularly initiated bill must be referred if the chambers failed to pass it in the form in which it was presented to them. (5) If the Reichstag adopted an amendment to the constitution and the Reichsrat did not concur, the latter might at any time within two weeks demand and obtain a referendum. (6) If the Reichstag by two-thirds majority suspended the president of the Republic from office, the question of removal was to be decided by the people. In no case might a referendum annul an enactment of the Reichstag unless a majority of the qualified electors voted on the proposition; and measures relating to the budget, taxation, and salaries could under no circumstances be referred save by decision of the national executive.<sup>2</sup>

Despite rather general expectation to the contrary, two de-

<sup>1</sup> Art. 73.

<sup>2</sup> For these various provisions, see Arts. 43, 73, 76. Of the 17 *Länder*, all provided in their permanent constitutions for some form of referendum, and all except Lübeck for some form of initiative. A great variety of regulations, however, appeared. See L. S. Greene, "Direct Legislation in the German *Länder*," *Amer. Polit. Sci. Rev.*, June, 1933, and R. H. Wells, "The Initiative, Referendum, and Recall in German Cities," *Nat. Munic. Rev.*, Jan., 1929.

ductions that might have been drawn from the experience of Switzerland have held generally true of the initiative and referendum in all of the Central European states that adopted the devices after the war. The first is that they would be used sparingly, and the second that in so far as used at all, they would work out on conservative rather than radical lines. In the German Reich, only seven measures in all were started by popular initiative; only two of these reached a popular vote (one in 1926 confiscating the property of princes who ruled in Germany before 1918, and another in 1929 rejecting the Young Plan); and both were defeated. In the *Länder*, the record was even less impressive. Among weighty obstacles encountered in the Reich were the difficulty of securing the signatures of so large a proportion of the voters as one-tenth; the fact that the cost of securing such support must be borne by the petitioners; the ease with which, even when a petitioned measure was brought to a popular vote, the elements opposed to it could defeat it by instructing or persuading their supporters to stay away from the polls, thereby cutting the total vote to less than the necessary half of the entire electorate; and finally the probability that any popularly initiated measure would be opposed by the cabinet and chambers, the initiative being to all intents and purposes a means of seeking action on lines which the government had itself refused to follow. The referendum fared but little better. Of the six modes by which referenda might arise, as enumerated above, four were not employed at all, and the others in but few instances and with no very striking results. Speaking broadly, experience was the same in the *Länder*. Whatever the reasons, direct legislation totally failed to attain the importance expected of it when the constitutions were made. One restraining factor undoubtedly was proportional representation. With all shades of political opinion reflected in the legislative body, almost any issue could be brought to a head and decided there, leaving the groups with small incentive to appeal directly to the people except through the ordinary electoral processes.<sup>1</sup>

<sup>1</sup> On direct legislation in Central Europe generally, see A. Zurcher, *The Experiment with Democracy in Central Europe*, Chap. vi, and A. Headlam-Morley, *The New Democratic Constitutions of Europe*, Chap. viii. German systems and experience are dealt with in H. Finer, *op. cit.*, II, 935-941; J. Mattern, *op. cit.*, 551-561; R. Thoma, "The Referendum in Germany," *Jour. of Compar. Legis. and Internat. Law*, Feb., 1928; H. F. Gosnell, "The German Referendum on the Princes' Property," *Amer.*



4. Status  
under the  
Nazi govern-  
ment

Students of history will recall the frequent use of the plebiscite by both the first and the third Napoleon, and will not be surprised to find the device brought into play by European autocrats of our own day. Old-time hereditary monarchs scorned such procedures, but a Napoleon, a Mussolini, a Hitler—having come up from nowhere, but nevertheless emerging at the head of a boldly challenging revolutionary régime, may well find it expedient to seize favorable moments to put dramatically to the people the question of whether they do or do not endorse what is going on. A vote of approval is, of course, expected; and, whatever the fortune of the régime and of its leader eventually, such a vote seems rarely or never to be withheld. The Hitler régime has no use for the popular initiative, and not much more for the referendum as a device for actual law-making. Both are in abeyance, and in the new Nazi-made constitution which is envisaged, neither may be expected to find a place. To be sure, a “law concerning referenda,” dating from July, 1933, provides that the national cabinet may not only “question the people” as to whether or not they approve of a projected measure, but also take a vote similarly on “laws.”<sup>1</sup> There seems, however, to be no instance of anything of the sort being done, and the more favored procedure appears clearly to be that followed at the time of the Reichstag election of November 12, 1933, when a general plebiscite took place on the single, pointed question of whether “the policy of the national cabinet” was or was not approved and supported. Since on this occasion no less than 93.5 per cent of the 43,525,529 votes cast were in the affirmative, the results must have been regarded not only as a blanket endorsement of the government’s policies, but as indicating the most satisfactory method of giving the régime the appearance of a popular rootage.

*Polit. Sci. Rev.*, Feb., 1927. An excellent German work is C. Schmitt, *Volksentscheid und Volksbegehren* (Berlin, 1927).

<sup>1</sup> J. K. Pollock and H. J. Heneman, *The Hitler Decrees*, 36.

## CHAPTER XXXIV

### POLITICAL PARTIES AND THE RISE OF DICTATORSHIP

The workings of the pre-dictatorial parliamentary system described in the foregoing chapter were influenced profoundly by the number, nature, and functioning of political parties. Under the Empire, parties, although numerous and in some instances vigorous, were significant in only a rather negative way. They could criticize, and even paralyze, governments; but they could not turn them out or compel the formation of governments enjoying parliamentary confidence. After 1918, the situation was different. A greatly increased electorate furnished material for party followings of larger proportions. Parliamentary government, opening a way to party power and responsibility, gave new impetus and vitality to party life and provided wider scope for party activity. Proportional representation assured to all groups of appreciable size some measure of influence in the Reichstag. In a period, furthermore, when the country was mapping out a new scheme of national life, sharp differences of opinion on policies and methods naturally appeared, with resulting emphasis upon, and clash of, party programs and platforms. To be sure, the Weimar constitution said almost nothing about parties; it mentioned the subject only once, and then negatively, in a stipulation that public officials should be "servants of the whole community and not of a party."<sup>1</sup> This, however, was only because the authors of that instrument rightly believed that parties should consist of free and non-institutionalized associations of persons;<sup>2</sup> and in point of fact the period during which the constitution was in full operation witnessed by all odds the most vigorous party life in all German history. So far-reaching and powerful, indeed, did party organization

Increased  
importance  
of parties  
under the  
Republic

<sup>1</sup> Art. 130. It, however, fully assumed the existence of parties, as, for example, in the provisions relating to proportional representation.

<sup>2</sup> S. Neumann, *Die deutsche Parteien; Wesen und Wandel nach dem Kriege* (Berlin, 1932), 22-23.

become that the complaint was often heard that the party was everything and the individual nothing.

Leading  
parties:

From the revolution of 1918 thus flowed fundamental changes in party status and workings. No very great shift, however, took place in party alignments. New party names, to be sure, appeared; with a view to legitimizing itself in the young republic, nearly every party hastened to incorporate into its official title the ingratiating term *Volkspartei*, i.e., "people's party." And of course some elements entered into new combinations to meet the altered situation. Almost without exception, however, the nominally reconstructed parties turned out to be little more than the old groups under new labels. Furthermore, the party set-up as a whole showed remarkable continuity throughout the entire pre-dictatorial period, at least in the sense that, with one or two notable exceptions, the list of principal parties was the same at the end as at the beginning, however altered their relative importance and their general position in the life of the nation. Passing over the numerous and ever-shifting *Splitterparteien* ("splinter parties") which always cluttered up the political scene, one finds the major parties of the period some seven or eight in number, as follows:

1. *National-sozialistische Deutsche Arbeiterpartei*, or National Socialists

On the extreme right were the National Socialists, in a way the most remarkable party of all in that, although not even in existence when the Republic was founded and winning its first significant representation in the Reichstag only in 1930, it swept all opposition before it in the elections of 1932 and 1933, bore Adolf Hitler to dictatorial power, and in 1933 became the sole party in all Germany having a legal right of existence. Further comment upon this party may be deferred until we speak below of the Hitlerian dictatorship,<sup>1</sup> save to note that the movement from which the party sprang started in 1919 in Bavaria; that it found in Hitler a leader of rare gifts as an agitator; that, although at the outset tinged rather vaguely with socialism, the party devoted its energies fundamentally to combating Marxism and the internationalism, pacifism, and class war supposed to be inherent in that body of doctrine; that it was quite as hostile to parliamentarism as was the Communist party and imbued with ideas that led straight to Fascism and dictatorship; that its great objectives were racial homogeneity, national unity,

<sup>1</sup> See pp. 778-784 below.

and recovery of national power; that it marched to supremacy by capitalizing the humiliation and indignation of Germans in the post-war years, their economic difficulties, and their readiness in an hour of desperation to turn to any leader or party making large and plausible promises; and that, although recruited mainly from the middle classes and peasantry, the party drew support from all elements of society and in its membership, as well as in its program, became perhaps the most broadly national of all.

Next to the National Socialists, and, until their rise, occupying the principal position on the right, were the Nationalists. Perpetuating the old Conservative party, and absorbing various other pre-war conservative groups, this party was for several years after 1918 the largest of all, excepting only the Social Democrats. Conservative strength in pre-war times lay largely in those portions of the country which were predominantly agricultural; and the backbone of the Nationalist party continued to be the landed interests of eastern Prussia. Being devoted, however, to monarchy and instinctively hostile to everything that smacked of socialism, the revamped party drew support from monarchist die-hards, from officials and army officers of the old days, from industrialists, and from financiers everywhere, as well as from large numbers of middle-class people who feared the policies of a régime in which the way seemed open for almost any amount of socialistic experimentation. At first a party of protest purely, the Nationalists were in time compelled to face the question of whether they would coöperate with a republican government. One wing was always opposed to doing so. The majority, however, took a more practical attitude, and throughout most of the decade after 1919 (particularly after 1924) the party participated actively in the Reichstag, and at times was represented in the cabinet. Under the leadership of Alfred Hugenberg, however, it in 1928 renounced in principle its compromise with the Weimar system; and small groups which split off in protest against so reactionary a policy were never able to muster much strength. The weight of the party was always thrown to the support of private property and against socialism and communism; the League of Nations was opposed, and revision of the Versailles treaty, especially as to boundaries, colonies, and reparations, warmly advocated; pro-

2. *Deutschnationale Volkspartei*, or National People's party

tective tariffs, agricultural development, promotion of Christian religious education, and strong measures for land and sea defense held high positions in the party platform.

3. *Deutsche Volkspartei*, or German People's party

Organized in 1918 from the more conservative wing of the old National Liberal party, the People's party was essentially a party of business and industrial leaders, supported by a sprinkling of military officers, professional people, and conservative bourgeois folk. Originally quite as strongly devoted to monarchy as were the Nationalists, the party gradually, under the leadership of the statesmanlike Gustav Stresemann, took on a republican tinge; at all events, it set itself against any restoration of monarchy not accomplished by strictly constitutional means. Although relatively liberal on many matters, it could not be described as democratic; toward orthodox socialism it was more tolerant than the Nationalists, although no less in disagreement. It favored a stronger second chamber, a more powerful Reich president, control of the Reichstag by a middle-class *bloc*, centralization of authority in the national government, and protective tariffs for the benefit of industry. In foreign affairs, it advocated German entry into the League of Nations and supported the Locarno treaties, but demanded the union of Austria with Germany and insisted upon revision of the Versailles peace settlements. Throughout its career, it lived to a considerable extent on the prestige of its founder and leader (until his death in 1930), Stresemann.<sup>1</sup>

4. *Zentrums-partei*, or Center party

Founded shortly after 1870 to combat the anti-papal policies of Bismarck, and supported by a substantial majority of the politically active Catholic population of the country, the Center party held for many years before the World War more seats in the Reichstag than any of its competitors. Passing over into the republican period under the same name,<sup>2</sup> and otherwise largely unchanged, it usually ranked third. Efforts to draw support from non-Catholics met with some success, but the party was always held together, and in fact given an exceptional coherence and stability, by the religious tie. Geographically, its strength lay principally in southern and western Germany, but socially it was unusually cosmopolitan, bringing together Catholics of all

<sup>1</sup> R. Olden, *Stresemann* (New York, 1930); A. Vallentin-Luchaire, *Stresemann* (New York, 1931).

<sup>2</sup> Officially, the party was rechristened "Christian People's party," but the new name never drove the old one out of common use.

classes—industrialists, landholders, clergy, peasants, laborers, and others—a circumstance which not only caused it to be less identified with a particular economic interest than were most of the other parties, but operated to make of it an essentially moderate—in other words, a true center—party. Next to the Social Democrats, it was also probably the best organized of the parties. Before the war, one would never have expected to find it working with socialists. At Weimar, however, it collaborated with the Social Democratic party and with the Democrats in making the new constitution; and afterwards, because of its strategic position midway between Right and Left, it was represented in every cabinet up to the collapse of responsible government in 1933, supplying, indeed, the chancellor in more than half of the number. With a constituency so varied, it naturally contained elements differing widely on matters other than religion, and as early as 1919 its sympathy with measures of centralization prompted its large Bavarian following to organize itself into a separate Bavarian Christian People's party. Except, however, on issues involving states' rights, this regional party, although generally more conservative than the parent body, usually followed the *Zentrum's* lead. Believing fundamentally in private property and private initiative, the affiliated parties nevertheless put much stress on ideals of social justice and welfare. They opposed state control of schools, advocated religious education, favored measures for the improvement of agriculture, and in foreign affairs assumed a generally conciliatory attitude, although strongly advocating a union of Catholic Austria with Germany.

We noted that the right wing of the old National Liberal party passed in 1918 into the new People's party. Under the leadership of Dr. Hugo Preuss, Friedrich Naumann, and others, the left wing at the same time merged with an earlier Progressive party to form a new Democratic party—a party whose subsequent history unhappily symbolizes the tragedy of German politics in post-war years. Enlisting an exceptional number of men of education and talent, and winning seats (75 in number) in the Weimar Assembly exceeded only by those of the Social Democrats and Center, the party contributed brilliantly to the making of the constitution, participated in earlier republican cabinets, and formed one of the most promising bulwarks of the new political order. In this latter fact, however, lay its undoing. Defending

5. *Deutsche Demokratische Partei*, or Democratic party

the Republic by appealing to all groups—economic, social, and religious—to subordinate their differences and rally to the support of the nation's larger interests, and developing a moderate, non-spectacular program of electoral reform, reorientation of the *Land* governments, controlled capitalism, tax reform, promotion of social services, and peaceful revision of the Versailles settlements, the party might well in normal times have held and farther extended the support of the middle-class and professional and intellectual groups to which it appealed. The times, however, were not normal. Impatient with the leadership of moderates, and driven by hardship and disillusionment, the classes mentioned turned rather to the programs of extremists, right or left; and from the high point of 1919 the party's fortunes declined steadily until, in 1930, it formally disbanded, most of its members going over into a newly formed and never very successful *Staatspartei*, or State party, founded on principles appreciably more conservative, and even reactionary, than those of the party that had started off so hopefully a dozen years before.<sup>1</sup> The fate of the Democratic party is perhaps that which any moderate, liberal party must expect in times of prolonged and severe crisis, *i.e.*, depletion of its ranks, rejection of its policies, and even sheer extinction.

6. *Sozial-demokratische Partei Deutschlands*, or Social Democratic party

Under war-time stress, the great party of the Left in imperial days, the Social Democrats—never wholly united on questions of policy—broke asunder in 1916. To a degree, the breach proved permanent; for although near the end of 1922 a portion of the “Independents” rejoined the majority party, the larger element went over definitely to the Communists. Even so, however, unity was restored, and in later times there was but a single Social Democratic party. Until the National Socialists reached their zenith in 1933, this party was the largest and in other ways the most important in the country. At Weimar, it held 40 per cent of the seats and had a major voice in framing the constitution; in one Reichstag election after another, it polled more votes than any of its competitors—on several occasions, more than twice as many as the nearest one; it furnished the first president of the

<sup>1</sup> Other elements which entered into the making of the State party included young liberals formerly belonging to the People's party and a separate organization known as the People's National Union, which latter, however, almost immediately broke away again.

Republic and was represented in a large number of cabinets (although holding the chancellorship only during brief periods in 1919-20 and 1928-30); in Prussia particularly, but in most other sections of the country as well, it dominated or shared heavily in *Land* and local governments. No German party—scarcely, indeed, a party in any other country—was organized more effectively. Before the war, the party program was, at least in theory, Marxian. Even after 1918, the party nominally adhered to the principles of the Second International. The bulk of its members, however, always inclined toward socialism of a distinctly practical and moderate character, and this bent was considerably accentuated by years of association with Democrats, Centrists, and other moderates in the sobering responsibilities of establishing and operating a “bourgeois” parliamentary government. Edging away from many Marxian concepts, the party dropped others completely. As a result, it, like the British Labor party, ceased to be merely a class party, a party of manual laborers. Before the war, 90 per cent of its dues-paying members were such; in 1930, only 60 per cent, while 10 per cent were employers, 3 per cent officials, and 17 per cent housewives. From two-thirds to three-fourths of its parliamentary representatives under the Republic were trade union officials, party officials, writers, and journalists. Although naturally strongest in the cities, its following was so well distributed throughout the country that in 1928, for example, there were only three electoral districts out of a total of 35 in which the party did not poll at least 100,000 votes. In domestic policy, the party fought communism, upheld the Weimar constitution, supported parliamentary government, favored Reich unity with nevertheless a good measure of local self-government, stressed factory councils and other functional groups, opposed militarism and church influences in education, and advocated advanced social legislation, along with a program of gradual socialization. In foreign policy, it supported the League of Nations, favored disarmament, advocated free trade or at all events only moderate protection, upheld the rights of minorities, and urged revision of the peace treaties by regular methods, especially with a view to relieving the working class from the burden of reparations.

On the extreme left stood the Communists. Formed in the closing days of 1918 from Spartacist and other elements that were



7. *Kommunistische Partei Deutschlands*, or Communist party

imbued with Bolshevik doctrine and wholly opposed to any mere political revolution, the party early became the German section of the Third International and at all times took its orders—as well as funds for its support—from Moscow. At the outset, it had nothing but scorn for the Social Democrats' acceptance of the "inevitability of gradualness" and of coalition with bourgeois parties, and, as observed above, it refused to have any share in the election of the Weimar Assembly and therefore in the making of the republican constitution. Discovering, however, that the German masses were not revolutionary at heart, and that parliamentarism had apparently come to stay, the party decided as early as 1919 that the only practicable course under the circumstances was itself to become "parliamentary," to participate in elections, and to wring such advantages as it could from the give and take of politics, pending the arrival of times more propitious for the attainment of its ends by direct and violent action. Joined in 1922 by those of the Independent Socialists who did not choose to go back into the Social Democratic ranks, the party thenceforth participated in national, state, local, trade union, and practically all other sorts of elections, and usually was found well represented in legislative and other bodies. Denouncing all other parties—including the Social Democrats—as dominated by the "exploiting class," and playing unceasingly upon popular discontent engendered by the country's troubles, Communist manipulators and agitators achieved increasing success until finally in the Reichstag elections of November, 1932, nearly six million popular votes were polled and a total of 100 seats captured, mainly in larger cities like Berlin and Hamburg, and in sections of the Westphalian and Saxon industrial areas, where heavy gains were realized at the expense of the Social Democrats. The principles of the party were those of purest Marxism, adroitly applied to the German situation on lines calculated to make effective appeal to the workers. The peace settlements were portrayed as examples of capitalistic imperialism; stress was laid upon the need for coöperation among the oppressed classes of all countries and races; and the achievements of Russia were depicted in glowing terms as evidences of what might be expected in a German soviet state based on a proletarian dictatorship.<sup>1</sup>

<sup>1</sup> On the structure and history of German parties from the World War to the break-up of the party system by Hitlerian decrees of 1933, there is little in English

Persons far removed from the scene are likely to think of Continental European party systems as pretty much of a pattern, and therefore to suppose that up to the time when all parties except the National Socialists were suppressed in Germany, the rapidly shifting multi-party situation characteristic of France was substantially duplicated on the opposite side of the Rhine. Nothing could be farther from the truth. An excessive number of parties, to be sure, had been all too characteristic of the German Republic; lesser ones had formed and vanished with quite as much alacrity as among the French. Even under the Empire, however, the larger parties were more highly integrated and more elaborately organized than those of France; and until the National Socialist dictatorship drove them from the field in 1933, this was certainly no less true under the Republic. The rigidity of party organization—the power of party bureaucracy—was, as mentioned above, a source of frequent complaint, especially among representatives of the younger element of the rising generation who felt themselves cut off from the influence and opportunity to which they considered themselves entitled. In the view of an American writer, no party in the world, unless possibly the Conservative party in Great Britain, was as well organized on the eve of the dictatorship as was the German Social Democracy.<sup>1</sup> Certain other leading parties were not far behind.

Except for the Communists, who modelled their machinery on that of the parent party in Russia, all of the major parties (and, within their limits, many of the minor ones as well) were organized on somewhat similar lines. To begin with, they—like European parties generally—had memberships of more fixed and

outside of ephemeral newspaper and magazine material. Attention may, however, be directed to H. Finer, *Theory and Practice of Modern Government*, I, 558-600, and P. Kosok, *Modern Germany*, Chap. vii, where the individual parties are described briefly. Party lists, with very brief characterizations, appear in the annual issues of W. H. Mallory (ed.), *Political Handbook of the World*, issued by the Council on Foreign Relations. Outstanding German works include L. Bergsträsser, *Geschichte der politischen Parteien in Deutschland* (6th ed., Mannheim, 1932); S. Neumann, *Die deutschen Parteien; Wesen und Wandel nach dem Kriege* (Berlin, 1932); O. Koellreutter, *Die politischen Parteien im modernen Staate* (Breslau, 1926); F. Salomon, *Die deutschen Parteiprogramme* (Leipzig, 1926, and new ed. by W. Mommsen and G. Franz, Leipzig, 1931-32). On the Social Democrats, see especially R. Lipinski, *Die Sozialdemokratie*, 2 vols. (Berlin, 1927); on the Center, J. Schaff, *Die deutschen Katholiken und die Zentrumpartei* (Cologne, 1928); and on the Communists, E. Thälman, *Volksrevolution über Deutschland* (Berlin, 1931).

<sup>1</sup> J. K. Pollock, in *Amer. Polit. Sci. Rev.*, Mar., 1929, p. 863.

definite character than are boasted by any American party. Persons who desired to be recognized as members of a given party were required not only to signify adherence to the party's principles but to be enrolled on the party list, and in most cases to make regular contributions in the form of dues—although it must be added that the Social Democrats alone had been able to make this last-mentioned regulation reasonably effective. Practically all of the parties provided in their constitutions for the expulsion of disloyal members; and while there is no record of “purgings” carried out with such thoroughness as those periodically undertaken by the Communist party in Russia and by the Fascists in Italy, discipline seems in general to have been enforced rather effectively. One highly important means of holding in line members having political aspirations was the exclusive power which the party managers possessed to select candidates for seats in the Reichstag and other legislative bodies. No one might be a candidate except under a party banner, and no one could expect a party nomination unless of known loyalty and regularity. Women, of course, were party members equally with men. Active as voters, they also entered official life, and in 1930 as many as 40—chiefly Social Democrats—were to be found in the Reichstag.<sup>1</sup>

Party machinery:

1. National

A main distinguishing feature of German party organization was the elaborate, integrated, and continuously active machinery maintained from border to border of the country (or at all events wherever a given party had any appreciable strength), after the manner of English party machinery, but with little analogy in France except in the case of the United Socialists and, in less degree, two or three other parties of the extreme Right or Left. In all instances, the supreme party authority was the *Parteitag*, or national congress, consisting of delegates from the various electoral districts in proportion to the party vote or to the party membership therein, together with the party members in the Reichstag and the members of certain of the principal party committees. Endowed with full and exclusive authority to make and amend the party constitution, to draw up and revise the party program,<sup>2</sup> and to decide major questions of party policy,

<sup>1</sup> G. Parkhurst, “German Women in Politics,” *Harper's Mag.*, July, 1930.

<sup>2</sup> It was significant of the power of the German party organizations over the party members, including candidates, that the congresses made and imposed unified party programs in a fashion wholly foreign to English and French parties except to a certain extent in the case of parties to the leftward. See pp. 346–347 above.

this body met as a rule annually in the case of the smaller parties, although in that of the larger ones somewhat less frequently (once in three years, in Social Democratic practice) as a means of reducing expense. A *Parteivorstand*, or executive committee, functioned in lieu of the party congress during the lengthy intervals between the latter's meetings, and a *Vorsitzender*, or chairman, served as official party head. Both were chosen by the party congress in the case of the Democratic, Center, and Social Democratic parties, although by different agencies in other instances. All important parties maintained a sizable secretariat at the *Zentrale*, or national headquarters, in Berlin for carrying on the routine of party administration;<sup>1</sup> and in nearly all instances the chairman and executive committee were aided by a special committee (e.g., the *Parteiausschuss* of the Social Democrats) consisting of delegates from the districts, and meeting on call to settle matters which required deliberation but could not be postponed for decision by the party congress.

Aside from the Communists, who had built up their national organization from local units modelled on those employed in Russia, the parties regularly used the electoral district as their principal unit or area for local organization. Not every party was organized in every one of the 35 districts, but all districts had more than one party organization; and in all instances this organization more or less exactly reproduced the features of the national machinery, on an appropriately smaller scale. Within the district were village and city organizations, provincial and county organizations, built into a hierarchy in which each unit was integrated with the others, and with a district congress or convention, a district executive committee, and a district headquarters functioning within their respective spheres as did the national agencies enumerated above. Many of the local party officials, notes the authority cited above, were also members of the Reichstag or of the local *Landtag*, *Kreistag*, or *Gemeinderat*, and worked at party headquarters when their legislative duties permitted.<sup>2</sup>

2. Local

<sup>1</sup> The Social Democrats had the most pretentious central office, occupying several floors in a large building owned by the party and housing the newspaper *Vorwärts* and other party publications.

<sup>2</sup> J. K. Pollock, *loc. cit.*, 869.

Party  
propaganda

Thoroughness of party organization was matched by vigor of party administration and propaganda. Elections—national, *Land*, and local—were numerous; collapse of parliamentary majorities might precipitate them at almost any time; and as a rule they were fought bitterly. Parties, therefore, had strong incentive to keep their organization at the top-notch of efficiency, as well as to utilize every means at their disposal in recruiting new members. Committees on agriculture, business, municipal affairs, and other public interests helped formulate the party's views and proposals and impress them upon the voters. Other committees worked with special classes of the electorate, as women, officials, and new voters. Summer schools were held, excursions and celebrations organized, courses of lectures provided, publications of astonishing number and variety issued. The printing press was, indeed, utilized to the utmost—far more than in Great Britain, France, or the United States. Regular party magazines, sometimes of a high order, were published; special magazines for women, for the young, or for other special groups were issued; millions of copies of pamphlets and circulars inundated the country, no fewer than 72,000,000 pieces of such propagandist literature being put out by the Social Democrats alone in a single year, and a year that did not even see a Reichstag election.<sup>1</sup> Newspapers were very largely partisan, there having been since 1919 hardly such a thing as an independent press (in the party sense) in the country. *Vorwärts* was a leading organ of the Social Democrats, *Germania* of the Center, the *Kölnische Zeitung* of the People's party, *Völkischer Beobachter* and likewise *Der Angriff* of the National Socialists, *Die Rote Fahne* of the Communists, and so on down the list.<sup>2</sup>

At election time, propagandist activities were, of course, redoubled. Comparatively little use of the radio was made as yet, but in no other direction was effort or expense spared. Mass meetings, with amplifiers and moving-picture machines, were held, indoors and out; campaigners swept through the country by automobile; cylindrical bill-boards were plastered with posters, many distributed from party headquarters in Berlin, others pre-

<sup>1</sup> J. K. Pollock, *Money and Politics Abroad*, 266.

<sup>2</sup> The *Berliner Tageblatt*, the *Frankfurter Zeitung*, and a few other papers were, however, more independent. For an extensive list of German newspapers in 1932, with their party affiliations, see W. H. Mallory (ed.), *Political Handbook of the World* (1933), 76-77.

pared in the districts with a view to special local interests and susceptibilities; pamphlets and leaflets were passed out at meetings, on the streets, and even from airplanes; illustrated newspapers issued merely for the period of the campaign were given wholesale circulation and, in the opinion of observers, were widely read. Altogether, it is doubtful whether the technique of appealing to a huge electorate had been developed farther in any European country—an appeal, be it noted, which was almost entirely by and in behalf of the party as such, rather than in behalf of individual candidates, since, quite contrary to the situation in France, where the candidates largely make their own campaigns, it was in Germany the *party*, rather than candidate A or B, that the voter was importuned to support.

Organization, propaganda, and electioneering on so grand a scale are, of course, expensive. By 1930, the total annual outlay of the Social Democratic party, for both national and local purposes, mounted to almost fifteen million marks, or upwards of four million dollars. At the same time, the Nationalists were spending six to seven million marks a year, the National Socialists four to five million, the People's party about three million, the Center a million and a half, the Democratic or State party more than a million, the Communists probably as much. With some allowance for minor parties, the total, in the opinion of the best authority on the subject, ran in the year mentioned to approximately twenty-eight million marks, or seven million dollars—a sum larger by far than the aggregate for British parties and surpassed only (in presidential years) in the United States.<sup>1</sup> The same authority estimates that of this total, something like three-fourths was spent directly in elections, the remainder on general party work in the intervals between elections; although in the case of the Social Democrats the exceptional activity maintained between elections resulted in lowering the proportion spent on actual campaigns. As in France, but contrary to the situation in Great Britain and the United States, there were no legal limits upon what might be spent either by a candidate personally or in his behalf. Furthermore, there were no requirements, as in the United States, that the amounts and sources of campaign contributions be made public.

Party  
finance

<sup>1</sup> J. K. Pollock, *op. cit.*, 215-216.

How party  
funds were  
raised

The methods of raising money were various. The Social Democrats depended almost altogether upon the weekly contributions, or dues, required of their members by the party constitution, men paying more than women; and with reductions allowed for illness and unemployment. The system worked admirably. From approximately a million members, forty-two million individual contributions of this nature were received in 1929, and not even British Labor affords a more striking example of a party whose sinews of war are drawn (as ideally they should be) from the party rank and file as distinguished from large and more or less mercenary contributors. Other parties—notably the Democrats and the Center—sought to introduce the same plan, with variations appropriate to organizations of a more definitely bourgeois character, but no one of them met with equal, or even approximate, success in administering it; dues were indeed collected, but in nearly all cases from only a minor fraction of the party membership. The upshot was that most of the parties were forced to depend mainly upon such voluntary contributions as special appeals, particularly at election time, served to bring forth—supplemented, especially in the case of parties like the Nationalists and the People's party which boasted many members of means, by large donations on the order of those from which such a party as the British Conservatives largely subsists. Such donations naturally came partly from well-to-do party members who were sincerely interested in their party's well-being. They came also from large businesses, banks, and other corporate interests, which, following a practice by no means unknown in our own country, not infrequently contributed to two or three, or even practically all, parties simultaneously. Sometimes such contributions reflected actual endorsement of party principles, but more often they were made for a price—commonly the placing high on the list of party candidates of a member or good friend of the corporation making the gift. Practically all parties except the Social Democrats were inclined to favor as candidates persons who could contribute substantially to the cost of campaigns in their districts; practically all expected party officials and party members holding public office to make contributions; and a plan, introduced originally by the Social Democrats, of charging admission to campaign meetings at a rate sufficient to cover the costs involved (although an American can hardly imagine it

working in his own country) relieved party treasuries of considerable burdens.<sup>1</sup>

Asked to indicate major characteristics of the German party system as it functioned during the first decade of the Republic, one might single out the following. First, the marked tendency to multiplicity, as seen in the existence not only of as many as seven or eight parties of substantial size, but of absurdly large numbers of more or less evanescent "splinter" parties and groups. Apparently there was still truth in Bismarck's comment that the average German citizen is unhappy unless he has a party of his own. At the Reichstag election of 1928, as many as 30 different parties offered Reich lists; at that of 1930, a total of 24. Every national campaign prior to 1933 brought into being a host of little parties, set on foot by ambitious politicians or by disaffected groups—so-called parties, at all events, with often whimsical names and still more whimsical programs. The country had a strong multi-party tradition; the unsettled character of the times tempted to ill-considered party movements in all possible directions; proportional representation, together with national and state electoral laws enabling very small numbers of voters to nominate lists of candidates, supplied further opportunity and incentive. Many of the minor parties, of course, never won representation in the Reichstag, and sometimes the party situation in that body was simplified by decisions of certain of the lesser groups to pool their strength. There was always, however, a heavy wastage of popular votes on party lists representing mere "isms," and even the larger and more stable parties were so numerous as not only to confuse the voters but seriously to impede the free working of parliamentary government.

From the strength of party organization and intensity of party life resulted a carrying over, in an unusual degree for Germany, of national politics into state and local affairs. In imperial times, party politics on the whole entered but slightly into municipal and other local government. After 1919, it was a matter of frequent remark, tinged with regret, that local councillors and legis-

Some general characteristics of German parties:

1. Tendency to "splinter parties"

2. Extension of national parties into the field of local government

<sup>1</sup> During the second electoral campaign of 1932 (Oct.-Nov.), when all parties were short of funds, the National Socialists resorted to the solicitation of contributions by uniformed agents stationed on the streets of large cities. The Social Democrats also tried the plan. The only available account of German party finance is that given by J. K. Pollock in Chapters xii-xvi of the volume cited. Chapter xv is devoted to a discussion of the influence of money in politics.



lators, elected as Nationalists, Social Democrats, or what not, felt it incumbent upon them to carry their party principles and poses into the handling of even the most ordinary matters of purely local concern.

3. Tendency  
to economic  
and social  
particu-  
larism

In all countries, and at all times, political parties have tended to draw their support from particular classes of people and to frame their policies to serve the interests of those classes. To the extent to which this tendency prevails, they fall short of being broadly national and become more or less frankly particularistic, on geographical, racial, occupational, or other lines. German parties, under both Empire and Republic, were exceptionally particularistic. It was not merely that their strength was in most cases largely localized in given sections of the country; to a degree, this is true of English parties, and of American parties as well. The significant thing was the extent to which most of them represented and cultivated particular economic and social interests, as seen in their principles and programs, and even more concretely in their selection of candidates and the order in which candidates' names were placed on the lists to be put before the voters. The National Socialists made a great point of the need for a party that should rise, on broadly national lines, above the specialized economic interests and connections of the older parties. How truly even they will be able to meet this alleged need is, however, problematical.

4. Tendency  
to doctri-  
nairism

As compared with English and American parties, German parties were, like those of France, inclined to be doctrinaire. They held and propagated diametrically differing views not only on matters of immediate policy, but on such fundamentals as the nature of the state, the ends of government, and the processes of political action; they put forth lengthy programs which they supported by "a system of doctrine reading back from the merest daily detail to ultimate metaphysics;"<sup>1</sup> they clung resolutely to their separate identities and (with a few notable exceptions) co-operated with other parties in a grudging spirit. Ten years of wear and tear of parliamentary life under the Weimar constitution undoubtedly rubbed off some of their angularities and left them—or most of them—more practical-minded and tolerant. But they still had more of a philosophical bent than the parties of most other countries.

<sup>1</sup> H. Finer, *Theory and Practice of Modern Government*, I, 598.

As indicated above, a salient feature of the German party was its thoroughgoing integration under the dominance of the bureaucracy of party officials constituting the "machine." Elements of democratic control were in some cases, notably in that of the Social Democrats, not altogether lacking. But as a usual thing the party directorate ruled with an iron hand—nowhere more so than among the Communists. It called the party congress, prepared the agenda for the meetings, and largely dominated the proceedings; it collected and dispensed the party funds; it chose the candidates and assigned them an order of priority on electoral lists which, as we have seen, the voter had no option but to accept; it maintained strict control over the persons elected, and wielded disciplinary powers over the general rank and file; amid all, it found means of perpetuating its own authority. Criticism of this virtual dictatorship was voiced on plenty of occasions, with the "bound list" of candidates, the scheme of national lists, and indeed the whole proportional electoral system, as favorite objects of attack. Nevertheless, it remained true alike that "the parties were everything and the individual nothing" and that, in the words of Professor Koellreutter, the party directorate was "the master and not the servant of the voters."<sup>1</sup>

5. Domi-  
nance of the  
party bu-  
reaucracy

The political drama enacted by German parties and their leaders since 1919, on a stage swept by fierce currents of passion and unrest, has been one of extraordinary interest and significance. As its successive acts unfolded, political power was observed shifting ever farther from left-center to right, from moderation to bourgeois (as distinguished from proletarian) extremism, until in 1933 it burst upon an astonished world in the form of a frank dictatorship of an ultra-nationalist, chauvinist party, the National Socialists, which did not so much as exist when the Republic began. This latter devastating spectacle will require comment presently; but first a word about the party history that lay behind it.

A decade of  
party  
history:  
1919-24

As observed elsewhere, the general election of 1919 at which the Weimar Assembly was chosen—the first held in the country after 1912—resulted, notwithstanding the turbulence of the times, in a notable triumph for the moderate parties. Majority Socialists, Center, and Democrats together won almost 80 per cent of

<sup>1</sup> *Die politischen Parteien im modernen Staate*, 50.

the seats, and together they made the constitution. Hardly, indeed, was the work of the Assembly started before the three joined in support of what was in effect a coalition government. Bombarded from the right by monarchist reactionaries and from the left by Independent Socialists and Communists, and weakened by the Centrist breach which resulted in the splitting off of the Bavarian Christian People's party, this coalition fixed June 6, 1920, as the date for electing the first Reichstag to be chosen under the new fundamental law. In this contest, all three parties lost heavily. The coalition as a whole slipped from 326 seats to 225; the Nationalists, People's party, and Independent Socialists together won 124 more than in the previous election; and the Communists made their initial appearance with two. As a result, a new coalition took office, composed of Centrists, Democrats, and People's party representatives; and the first distinct shift toward the right, signalized by displacement of Majority Socialist by People's ministers, was a reality. Already a régime planned largely by socialists was in the hands of a government in which there were no socialists at all. During a period of the most baffling troubles, both domestic and foreign, the pendulum swung back far enough in 1922 to permit the now reunited Social Democrats to enter a reconstructed ministry in place of the People's party representatives. In years following, however, it was manifest that the left-center parties were steadily losing ground, primarily because of popular discontent with the domestic chaos produced by efforts to meet the demands of the peace treaties.

1924-30

The year 1924 brought two Reichstag elections. In the first one (May 4), necessitated by expiration of the mandate of the Reichstag chosen in 1920, the Social Democrats won only 100 seats (as contrasted with 173 won by the Majority Socialists alone four years previously) and, as was foreshadowed by the results of recent *Land* and municipal elections, the moderate parties lost all along the line. At one extreme, the Nationalists captured 95 seats; at the other, the Communists 62. A Social Democratic Reich president (Ebert) found himself at the curious task of planning a cabinet to be presided over by a Nationalist; and although this did not work out, the ensuing government found that it could not get on without Nationalist support, which, however, could be had only at the price of admitting Nationalists


(still avowed enemies of the republican form of government) to a number of cabinet seats. In the hope of overcoming the difficulty, the Reichstag was dissolved and another general election held (December 7). The moderate parties did, indeed, make some gains, and the Communists suffered some loss. The Nationalists, however, profited sufficiently to be able to remain in a key position, and early in 1925 (after an interregnum of a month during which no leader was able to form a ministry) a Centrist-People's-Nationalist coalition took office under the chancellorship of Dr. Hans Luther. Once more power shifted to the right, for this was the first time that Nationalists had been admitted to the cabinet; and the swing presently received further emphasis from the election of Field Marshal von Hindenburg to the presidency of the Republic.

From 1925 to 1928, the most troublesome factor in the making up of swiftly rotating cabinets continued to be the imposing strength of the Nationalists; now they were out, now in; and although the major elements in the party were induced in 1927 to pledge loyalty to the Republic, a definite repudiation the next year, under Hugenberg's leadership, of all compromise with the Weimar system merely confirmed the suspicions of those who had grudgingly worked with them. A general election in May of the latter year, in which the Social Democrats recovered ground and the Nationalists fell back sharply, changed the picture for the time being and eventuated, in the spring of 1929, in a "grand coalition" in which five parties—Social Democrats, Center, Democrats, People's, and Bavarian People's—were represented in proportion to their strength in the Reichstag, with a Social Democrat once again in the chancellorship for the first time since 1920.<sup>1</sup> But hope that something approaching political equilibrium had at last been reached proved illusory. Within a year, economic difficulties overwhelmed the many-sided coalition; a new combination of March, 1930, representing another swing to the right because of the absence of the Social Democrats, and with the Centrist leader, Dr. Heinrich Brüning, as chancellor, fared little better; and when another Reichstag election was held in the following September, the outstanding result was amazing gains by the Communists at one extreme and still more by the National

<sup>1</sup> This chancellor, Hermann Müller, had, however, headed a temporary "ministry of personalities" organized immediately after the 1928 election.

Socialists at the other, seats being increased in the one case from 54 to 76 (with a 40 per cent rise in the popular vote) and in the other from 12 to 107, on the basis of a popular vote which had mounted from 809,000 in 1928 to 6,400,000. To the consternation of all moderates, the Hitler party was now outranked in the Reichstag by only the Social Democrats.<sup>1</sup>

Rise of the  
National  
Socialist  
party

The growth of the National Socialist movement is the most extraordinary feature of German politics since the World War. Eventually attaining its greatest strength in Prussia, the movement nevertheless started in Bavaria, where amidst the dire political confusion incident to revolution and counter-revolution in 1919, the Austrian-born Adolf Hitler—embittered by personal disappointments and hardships, and animated by deep-seated prejudices—joined with a half-dozen congenial spirits at Munich in organizing a *Nationalsozialistische Deutsche Arbeiterpartei*, or National Socialist German Workingmen's party. A daring program commonly referred to as the "Twenty-five Points" was formulated in 1920 by Gottfried Feder, a member of the original group and later economic adviser to the party,<sup>2</sup> and in 1921 Hitler launched a propagandist campaign which has hardly a parallel in the annals of modern politics, and by which he was borne from utter obscurity to the rôle of dictator of all Germany. For years, to be sure, progress was slow. An abortive attempt in 1923, in coöperation with General Ludendorff and others, to overthrow the Weimar Republic brought Hitler a prison sentence; and although he was soon released, restrictions were placed upon him, and the movement with which he was identified continued to be regarded as constituting no very serious menace to the political order. In 1924, the party captured 32 seats in the Reichstag, but in 1928 only 12. Years of apparently scant advance were utilized, however, in perfecting organization and technique, on lines considerably influenced by those developed by Mussolini in Italy. The swastika, or hooked cross () was adopted as the party emblem and the brown shirt as chief feature of the party uniform. An elaborate ritual was devised and a system of party dues introduced. On the model of Mussolini's *squadristi*, trusted

<sup>1</sup> A. Mendelssohn-Bartholdy, "The Political Dilemma in Germany," *For. Affairs*, July, 1930; J. K. Pollock, "The German Reichstag Elections of 1930," *Amer. Polit. Sci. Rev.*, Nov., 1930.

<sup>2</sup> Author, also, of *Der deutsche Staat* (10th ed., Munich, 1933), characterized by Hitler, at the time of its publication, as the "catechism" of the movement.

young supporters were organized as *Sturmabteilungen* ("storm troops"), charged with protecting the meetings of the Nazis and breaking up those of the hated Communists. For purposes of agitation, the country was divided into 26 districts, each subdivided into "cells" to which were assigned quotas of trained speakers and party workers. Towering above all his associates as an agitator, although by no means the sole author of the party program and organization, was Hitler himself, master of flowery emotionalism and "spell-binder" of the first rank.

What the party had to offer the country was for a good while rather uncertain. To be sure, the Twenty-five Point program of 1920—declared "unalterable" in 1926—was meaty enough. The "union of all Germans in one Great Germany," abrogation of the treaties of Versailles and St. Germain, exclusion of Jews and all other non-Germans from "the German nation," immediate expulsion from the country of all non-Germans who had entered since August 2, 1914, summary confiscation of all "war profits," "communalization" of large department stores, substitution of "Germanic common law" for "materialistic international Roman law," rigorous "purification" of the press, creation of "a strong central power in the Reich" and concentration of "absolute authority" in a "political central parliament"—these, with various other planks, certainly constituted a sufficiently ambitious party platform.<sup>1</sup> There was also, however, plenty of vagueness, with no lack of incongruities and contradictions, partly because the program received new twists and interpretations as the campaign proceeded in different parts of the country, partly because from Hitler down the party workers were generally more given to emotionalism than to statesmanlike planning and discussion. Certain main objectives, however, became sufficiently clear, even before Hitler elaborated them in his book of 1923 entitled *Mein Kampf* ("My Struggle").<sup>2</sup> Chief among these were: (1) unification of all Germans (including those in Austria, Czechoslovakia, and other border countries) in a powerful and thoroughly nation-

National  
Socialist  
policies and  
objectives

<sup>1</sup> The text of this extraordinary document will be found in F. Salomon, *Die deutschen Parteiprogramme* (Leipzig and Berlin, 1926), III, 73-88, and in English translation in J. K. Pollock and H. J. Heneman, *op. cit.*, 1-3; C. B. Hoover, *Germany Enters the Third Reich* (New York, 1933), 229-233; and *For. Pol. Reports*, IX, No. 10 (July, 1933), 110-111.

<sup>2</sup> *My Battle* (Boston, 1933), is an English edition abridged and translated by E. T. S. Dugdale.

alized "Third Reich";<sup>1</sup> (2) abrogation of the peace treaties of 1919, refutation of war guilt, recovery of the lost colonies, and general rehabilitation as a European and world power; (3) racial homogeneity on lines of the most extravagant Nordicism; (4) repression of communism, of Marxian socialism, and of every doctrine or movement tinged with internationalism, pacifism, or ideas of class warfare; (5) social and economic reforms (abolition of incomes not earned by work, confiscation of war profits, prevention of speculation in land, etc.) aimed at assuring employment and "decent living conditions" for the citizenry; and (6) drastic curtailment, if not total suppression, of "parliamentarism."

Sources of  
party  
support

There were always elements in Germany—Pan-Germans, militarists, anti-Semites, political absolutists—to which one portion or another of a program such as this would appeal. It is, however, inconceivable that even a party endowed with the capacity for high-pressure propaganda displayed by the National Socialists should ever have been able to capture control of the country on the strength of such a program save for one major circumstance, *i.e.*, the disillusionment and despair prevailing after the war, and reaching unprecedented depths in the depression years beginning with 1929. Conditions were bad enough at all times after 1918. But it was only when, in 1929-30, the authorities under the Weimar constitution ceased to be able to maintain tolerable living conditions for the mass of the people that the National Socialist movement began to go ahead by leaps and bounds. Urban, industrial labor, largely socialist or communist, generally held aloof; likewise the more strongly Catholic sections of the country. But, like Italian Fascism, the movement captured the middle classes and the peasantry. University graduates, unable to find jobs, turned to it hopefully; professional people, hard-pressed by Jewish competition, were attracted by its anti-Semitic policies; struggling shop-keepers were drawn by its promise of restraints upon trusts and department stores; debt-burdened small landholders thought they saw in it a chance for relief; even large industrialists, construing the party's mildly socialist pronouncements as mere bait for the masses, accepted and even welcomed it as a bulwark against communism and as a check upon trade

<sup>1</sup> The Hohenstaufen Empire of the Middle Ages was reckoned as the "First Reich" and the Empire of Bismarck and William I as the "Second Reich."

unionism. With the sentiment of nationalism burning at white heat, groups and interests normally antagonistic toward one another were caught up and carried along as by a common impulse.<sup>1</sup>

The astonishing showing of the National Socialists in the Reichstag election of September, 1930, caused the growth of the party to be viewed for the first time as a serious threat to the Weimar system—and rightly, as it proved, since within less than two and a half years Hitler was chancellor and Nazi dictatorship looming straight ahead. The stormy politics of this transitional period cannot be traced in detail here, but a few of the mile-posts on the road to unfettered Nazi rule may be indicated. The results of the 1930 elections were extremely embarrassing to the Brüning government, which, however, by turning sharply to the left and attracting support from the Social Democrats (still the most numerous group in the Reichstag) contrived to remain in office until May, 1932. Government, however, was entirely by means of drastic decrees issued under Article 48 (though with indirect parliamentary assent), and the chancellor's hope of pulling the country out of the financial mire into which it had fallen and at the same time deflating the Nazi movement failed of realization. In March, 1932, Brüning was largely instrumental in bringing about the reelection of von Hindenburg to the presidency.<sup>2</sup> Two months later, however, the old Field Marshal came to the conclusion that it was time to part with his chancellor, partly because of the latter's unwillingness to acknowledge the necessity of making some sort of terms with Hitlerism, partly for other reasons; and on May 31 Colonel Franz von Papen, then a right-wing Centrist, was called upon to form a government of "national concentration," *i.e.*, a combination of the Nazis and the Center. The plan failed. Angered by the dismissal of Brüning, the Center withheld its support, and the Papen-Schleicher government that eventually took shape proved to be only a group of non-party aristocrats with substantially no parliamentary following.<sup>3</sup> On the ground that elections of legislatures in Prussia

Troubled  
politics,  
1930-32

<sup>1</sup> M. S. Wertheimer, "The Hitler Movement in Germany," *For. Pol. Reports*, VI, No. 23 (Jan. 21, 1931); C. J. Friedrich, "National Socialism in Germany," *Polit. Quar.*, Oct.-Dec., 1931.

<sup>2</sup> See p. 704 above.

<sup>3</sup> Major-General Kurt von Schleicher occupied the key position of minister of defense. Von Papen had resigned from the Center.



and other *Länder* in recent months had shown that the Reichstag no longer represented the will of the German people, President von Hindenburg, on June 4, dissolved that body. On June 20 occurred the *coup d'état* by which the Social Democratic government of Prussia was ousted and Chancellor von Papen proclaimed Reich commissioner;<sup>1</sup> and on July 31, following a campaign of unprecedented bitterness, a new Reichstag was elected.

Hitler  
becomes  
chancellor  
(1933)

Hitlerism now reached a new peak. Its popular vote (13,772,748) was more than double that of 1930, and the 230 seats captured represented a net gain of 123. The Social Democrats, nevertheless, won 133 seats, the Centrists and Bavarian People's party together 97, and the outcome was regarded as essentially a deadlock between the national, authoritarian forces on the one hand and the forces of the Weimar constitution on the other.<sup>2</sup> Proposing to rely on more or less passive support of the National Socialists and the Center, the von Papen government encountered nothing but trouble, and again, on September 12, the Reichstag (which had transacted no business except of a purely formal nature) was dissolved, President von Hindenburg having in the meantime held a long-awaited interview with Hitler in the course of which the latter made it plain that he would enter no government except as chancellor and endowed with full power. After a contest considerably less exciting than that of the previous July, a new Reichstag was chosen on November 6. Again the results were inconclusive. The National Socialists polled two million fewer votes than in July and won 35 fewer seats; the Communists made farther gains. But the general situation was left about as before, the von Papen government—credited with considerable successes in foreign affairs, but increasingly unpopular on the score of its domestic policies—continuing in office for the time being in default of any more promising arrangement. Shortly afterwards, the cabinet's position grew so hopeless that President von Hindenburg renewed discussions with Hitler, only to find that the latter still insisted on "all power or nothing." At the beginning of December, General von Schleicher, after a

<sup>1</sup> See p. 697 above.

<sup>2</sup> J. G. Kerwin, "The German Reichstag Elections of July 31, 1932," *Amer. Polit. Sci. Rev.*, Oct., 1932. Cf. H. L. Childs, "Recent Elections in Prussia and Other German *Länder*," *ibid.*, Aug., 1932.

prolonged crisis, assumed the chancellorship, but with no better results; and on January 30, 1933, the event toward which (notwithstanding the apparent set-back in the November elections) political developments of the past two years had been moving irresistibly at last took place: Adolf Hitler was named chancellor.

The meaning of the event was not lost upon either the German people or the world at large. To be sure, the new cabinet consisted of Nationalists and non-party men as well as Nazis, with the last-mentioned in a decided numerical minority;<sup>1</sup> and among the non-Nazis was ex-Chancellor von Papen, who, along with the Nationalists, was plainly expected by President von Hindenburg to keep the Nazis in check. The latter, however, held the key positions; they had the driving force and the popular support; and from the outset there was no room for doubt that theirs would be the power. Furthermore, there could be no two opinions as to what would happen to parliamentary government. Already, that proud creation of the Weimar constitution was virtually dead. For three years, government had been almost entirely by executive decree. Reichstags had been elected, convened, and dissolved, but none had wielded power except of a purely negative sort. And if the Hitlerites had any clear-cut political conviction at all, it was that parliamentarism was a failure.

Toward dictatorship

National Socialist dictatorship, already long on the horizon, was now assured. It did not, however, leap at once into the saddle. After all, the cabinet was a coalition, with the Nazis in a minority; there was still a Reichstag, in which, after all groups on the right were counted, majority support was still lacking; nationwide enthusiasm remained to be whipped to a pitch that would furnish a still more favorable psychological setting. Aside from rapid displacement of Social Democratic and other opposition officials by Nazis, accompanied by relentless measures against Communists and Jews, the means by which Nazi control was to be made an overt and complete reality was the election of a new Reichstag, and at the same time of a new Prussian diet. It was not that Hitler looked to a régime under which legislatures should rule, but rather that the majorities which he expected to win would lend sanction, at home and abroad, to the revolution now

<sup>1</sup> Three members out of a total of 12.

about to be carried out, while the excitement and turbulence of a campaign would also furnish opportunity for sweeping fresh hordes of people under the Nazi banner. With the Reichstag dissolved on February 1, in order to afford the people a chance to "express themselves concerning the newly formed government of national concentration," a contest was opened in which Nazi fury was given full vent at the expense of Social Democrats and Communists, who indeed were practically prevented from carrying on a campaign at all. The elections took place on March 5; and while the working classes showed plenty of independence by casting 7,000,000 votes for Social Democratic and 4,800,000 for Communist candidates, and while the Catholic parties actually increased their Reichstag representation, more than 17,000,000 votes were polled by National Socialist, and 3,100,000 by Nationalist, candidates (together, 52 per cent of the total popular vote), yielding the government 341 seats,<sup>1</sup> or a majority of the new total of 648.

Dictatorship  
becomes a  
reality

The victory was not overwhelming, but it sufficed. Throughout the campaign, indeed, the Nazi leaders had made it clear that they had no intention of giving up power even if they fell short of a majority. Already a decree of February 28, inspired by the burning of the Reichstag building on the previous day, had suspended private rights throughout the country, and new measures now followed in swift succession. Persecution of Communists and Jews was redoubled; thousands of minor office-holders were removed; Bavaria became the last of the *Länder* to be brought under centralized Nazi control; the flag of the Republic was replaced on all public buildings by the old imperial black-white-red ensign along with the Nazi swastika. The newly elected Reichstag was convened for a single sitting at Potsdam, and there, on March 23, it passed by a vote of 441 to 94 the famous Law to Combat the National Crisis, commonly known as the "Enabling Act," which, so far as a parliamentary measure could do it, gave the already well developed dictatorship the sanction of national approbation. Give us, Hitler had said, four years (the legal period of a Reichstag) in which to wipe out the consequences of 14 years of misrule by the parties of the Weimar constitution, and then let the country sit in judgment. In answer, the obedient dep-

<sup>1</sup> Nazis 288, Nationalists 53. The Social Democratic quota was 118 and the Communist 81.

uties conferred upon the "national cabinet"—in effect upon Hitler himself—power up to April 1, 1937, to make laws, conclude treaties, adopt budgets, and indeed, to do, without check or restraint, anything whatsoever, inside or outside of the constitution, except to diminish the rights of the president of the Republic or to abolish the Reichstag or Reichsrat.<sup>1</sup> The demand for dictatorial powers was not unlike that made of the Italian Parliament by Premier Mussolini in 1922, and it met with equally ready and full response. The iron chancellor Bismarck in his day wielded enormous authority, but never anything approaching that now placed in the hands of the Nazi chief.

Developments in the months that followed cannot be touched upon here save as to one matter specially germane to the present chapter, *i.e.*, the break-up of the party system. At appropriate points elsewhere, mention has been (or will be) made of the further extension of control over the *Länder*, the suppression of the Reichsrat (notwithstanding the guarantee contained in the Enabling Act), the "restoration" of the civil service, the confiscation of the property of Communists and other "public enemies," the emasculation of the electoral system, the reconstruction of the National Economic Council, the reorganization of provincial and local government, the "coördination" of the church, and sundry other matters, including the fantastic Reichstag election of November 12, 1933, and the accompanying national plebiscite on the question of endorsing the policies of the Hitler government.<sup>2</sup>

Suppression  
of rival  
political  
parties

The election referred to was fantastic because, after the manner of national elections in Fascist Italy,<sup>3</sup> the candidates were all put forward by a single party; and this was true because in the meantime all parties except the National Socialists had been either suppressed outright or gradually squeezed out of existence. As in Italy, the supreme objective of the dictatorial régime was a

<sup>1</sup> The five articles comprising this remarkable law will be found in J. K. Pollock and H. J. Heneman, *The Hitler Decrees*, 13-14.

<sup>2</sup> See p. 735 above. The question put to the people on this occasion was: "Do you, German man, and you, German woman, agree to this policy of your national cabinet [as set forth in the electoral decree], and are you willing to declare it to be the expression of your own opinion and your own will and to espouse it solemnly?" The question was to be answered, in the appropriate circle on the ballot, by *Ja* or *Nein*. Out of 43,525,529 votes cast, 40,583,430 were affirmative, 2,952,100 negative, and 789,999 invalid.

<sup>3</sup> See p. 835 below.

"totalitarian state" (*Totalstaat*), which, whatever else it might mean, was to permit of but a single party; and after the November triumph, full power was exerted toward the attainment of this end. First of all, the Communists were outlawed and as a party annihilated.<sup>1</sup> Next in line of fire stood the Social Democrats. Wholesale arrests of their leaders, coupled with suppression of their newspapers, in the spring of 1933 demoralized the once formidable party and reduced it to impotence. In May, when Nazi troops seized the records, headquarters, and property of the trade unions, it all but disappeared. In June, the work was completed when a decree declared the party "subversive and inimical to the state and people" and entitled to "no other treatment than that accorded to the Communist party," outlawed it completely, expelled its 121 deputies from the Reichstag, announced that all of its property would presently be sequestered, and forbade meetings, publication, and every other form of activity and propaganda in its behalf. Already, in April, that portion of Stresemann's People's party which had not already deserted to the Nazi camp had voted to disband, with advice to the remnant to become National Socialists likewise. Late in June, the Nazi press bureau announced that the Nationalist leaders had decided "voluntarily" to dissolve their party and that the Nationalist group in the Reichstag would forthwith join the Hitler party. About the same time, the State party (successor to the former Democrats) was ended by decree, on the ground that at the last elections it had pooled its interests with the Social Democrats. On one pretext or another, various minor groupings were disposed of summarily, and by the end of June only two parties remained to be "coördinated." These were the Center and its Bavarian affiliate, which held out awhile precariously, but not for long, because early in July they too were "voluntarily" dissolved, their adherents being invited to join the Nazi party as "guest members."

On July 14, the work of coördination was capped by a decree of the national cabinet declaring the National Socialist German Workers' party "the only political party in Germany" and imposing heavy penalties upon any one undertaking "to maintain the organization of another political party or to form a new

<sup>1</sup> With characteristic irony, their Berlin offices were converted into headquarters for the Nazi police.

political party.”<sup>1</sup> “The political parties,” announced Hitler proudly, “have now been finally abolished. This is an historical event of which the importance and far-reaching effects have in many cases not yet been realized by all. We must now get rid of the last remains of democracy, especially of the methods of voting and of the decisions by majority. . . . The [National Socialist] party has now become the state.”<sup>2</sup>

Hence it was that when, in November, 1933, an unopposed Nazi list of candidates for the Reichstag was put before the country, it received 93.5 per cent of the almost forty million votes cast. Hence it was, too, that on the same occasion 93.5 per cent of the even larger vote cast on the question of giving the Hitler policies a blanket endorsement were affirmative. Hence it was, finally, that when, one month later, the new all-Nazi Reichstag held a seven-and-one-half minute session for the sole purpose of electing officers, 659 Brown Shirts rose and sat down in unison when the government's list was put to a vote, and then went obediently about their own business. Not that all Germany had gone National Socialist, or was accepting the dictatorial régime wholeheartedly and sincerely. What proportion of the people were so accepting it, no man knows, in Germany or out. Observers agreed that the opposition was so scattered and demoralized that, with any sort of luck, the dictatorship would probably last a good while; also that the country would certainly never go back to the Weimar system in its entirety. On the other hand, there must have been large elements, especially among the working classes, which could never give the new order more than lip-service, and other elements, besides, whose loyalty could be counted upon only so long as the régime showed promise of serving the country's national and international interests as other régimes had failed to do. At the date of writing (March, 1934), the dictatorship had achieved a certain consolidation at home and rather more elbow-room internationally. But its future was on the lap of the gods. The “most democratic democracy of the world”<sup>3</sup> had collapsed; a great party system was in ruins; an entire fabric of government had been made over. Whether the new approach

A one-party  
government  
faces the  
future

<sup>1</sup> J. K. Pollock and H. J. Heneman, *op. cit.*, 34.

<sup>2</sup> Speech to the Reich commissioners, July 6, 1933.

<sup>3</sup> Such was Minister of the Interior David's exuberant characterization of the Weimar system when the constitution was voted in 1919.

to a solution of the country's admittedly difficult problems would yield results justifying the damage done, only time could tell.<sup>1</sup>

<sup>1</sup> The best general account of the National Socialist movement and the rise of the dictatorship is C. B. Hoover, *Germany Enters the Third Reich* (New York, 1933). A good briefer treatment is H. F. Armstrong, *Hitler's Reich* (New York, 1933). National Socialist ideology is discussed in H. D. Lasswell, "The Psychology of Hitlerism," *Polit. Quar.*, July-Sept., 1933, and F. L. Schuman, "The Political Theory of German Fascism," *Amer. Polit. Sci. Rev.*, Apr., 1934. On the growth of dictatorship may be cited C. J. Friedrich, "Dictatorship in Germany?," *For. Affairs*, Oct., 1930; M. J. Bonn, "The Political Situation in Germany," *Polit. Quar.*, Jan.-Mar., 1933; M. S. Wertheimer, "Forces Underlying the German Revolution," *For. Pol. Reports*, IX, No. 10, July 19, 1933; B. Mirkin-Guetzévitch, "The Dictatorial State," *Polit. Quar.*, Oct.-Dec., 1933, pp. 575-586; and F. Neumann, "The Decay of German Democracy," *ibid.*

## CHAPTER XXXV

### LAW, JUSTICE, AND LOCAL GOVERNMENT

No one familiar with the history of Germany through the centuries would expect to encounter early development of a single system of law. To be sure, even before the dawn of modern times there were weighty unifying legal factors or influences. One of these was the Roman, or civil, law, which, with sundry modifications, was adopted widely during the Middle Ages. Another was the prevalent concept of natural law, *i.e.*, principles and rules deduced by reason from the inherent nature of man. In general, however, each of the more or less autonomous jurisdictions existing both under the Holy Roman Empire and under the German Confederation of 1815 developed its own legal system; and when genuine political unification was for the first time achieved, in 1867, the new North German Confederation was found to contain upwards of two score areas each of which had a distinct body of law, both civil and criminal. Not only so, but (as the number would suggest) the boundaries of these areas no longer coincided, as they previously had done, with those of the political divisions or states. The case of Prussia was typical. As early as 1851, a uniform code of penal, or criminal, law had there been adopted. But as for civil law, the older provinces were living under an *Allgemeine Landrechte* promulgated in 1794; the Rhenish provinces held to the *Code Napoléon* extended over them during the French occupation; in the Pomeranian districts, there were large survivals of Swedish law; while the territories acquired after the war of 1866 had each its indigenous system. At best, only two German states had in 1867 a fairly uniform body of civil law. The *Landrecht* of Baden was a German version of the French *Code civil*, and the kingdom of Saxony had in 1863 adopted a code of its own devising. Still less was there any approach to uniformity of law on an interstate basis. And everywhere a heavy growth of custom overlaid such law as had taken written form, adding decidedly to the confusion.<sup>1</sup> Throughout the first three quarters

A country  
with many  
systems of  
law

<sup>1</sup> F. K. Krüger, *Government and Politics of Germany*, Chap. xvi.



of the nineteenth century, the growing unity of German life led numerous jurists and organizations to call attention to the need for greater solidarity in legal matters. But only after the North German Confederation, and especially the Empire of 1871, came upon the scene did conditions become favorable for action.<sup>1</sup>

Adoption of  
modern codes

From 1867 onwards, there was machinery for enacting law of general application, and in 1870 a unified body of criminal law based on the Prussian code, and later extended throughout the Empire, was adopted for the North German Confederation. Furthermore, an amendment to the imperial constitution in 1873 conferred upon the Bundesrat and Reichstag power of "general legislation as to the whole domain of civil and criminal law and of judicial procedure."<sup>2</sup> Armed with this authority, the government of the Reich promptly set about meeting the palpable need. Attacking the problem first on the procedural side, it had indeed, with characteristic German thoroughness, and even before the constitutional amendment was adopted, set up a learned commission charged with drafting codes for court organization, civil procedure, and criminal procedure; and, beginning with a code of civil procedure, published in 1872, this body brought forward an elaborate project in fulfillment of each of its several assignments. The code of civil procedure, which introduced many important reforms in the interest of publicity and speed, was well received. The one relating to criminal procedure, which proposed, among other things, to abolish jury trial throughout the Empire, was, however, vigorously opposed, and ultimately all three reports were referred to a new commission, which completely remodelled the draft projects relating to criminal procedure and the organization of the courts. In the end, the revised projects were adopted, and on October 1, 1879, the three resulting codes went into effect.<sup>3</sup> To this day, the code of civil procedure has never been materially altered; and a revised code of criminal procedure did not find acceptance until 1924.

This left, however, the great field of substantive law still un-

<sup>1</sup> Save in respect to commerce. A commercial code for the entire German Confederation went into effect in 1859.

<sup>2</sup> Art. 4.

<sup>3</sup> The *Gerichtsverfassungsgesetz*, or Law of Judicial Organization, of January 27, 1877; the *Civilprozessordnung*, or Code of Civil Procedure, of January 30, 1877; and the *Strafprozessordnung*, or Code of Criminal Procedure, of February 1, 1877.

touched (except for the criminal code of 1870); and here even more difficulty and delay were encountered. From 1874 to 1887, a committee of jurists and professors labored at the gigantic task of codifying the civil law. A draft code published in 1887 stirred much discussion, and only after another commission had worked for years was a remodelled project accepted by Parliament in 1896 and on January 1, 1900, put into operation as the *Bürgerliches Gesetzbuch*.<sup>1</sup> Viewed by critics and commentators alike as a brilliant example of jurisprudence, the civil code covers in thorough fashion all such matters as the regulation of obligations, family law, the law of inheritance, and the law of things. While, naturally, it has been amended from time to time, it in the main retains its original character, and along with the French *Code civil* (of which it has become a formidable rival), it deserves to be considered one of the foremost attempts in modern times to set forth in organized form the principles and rules of the civil law of a nation.<sup>2</sup>

Agreement upon a thoroughly modernized criminal code proved most difficult of all. As stated above, the North German Confederation had managed to adopt a uniform criminal code shortly before the Franco-Prussian War, and this, extended to the South German states, continued in operation after the transition to the Empire. In time, however, the development of the science of criminology led to a strong demand on the part of progressive jurists—especially the disciples of Franz von Liszt—for a general reworking of the code. A commission appointed in 1906 reported three years later, provoking a storm of discussion, accompanied by publication of numerous counter-proposals. A second commission set up in 1911 reported in 1913. The war, however, intervened, and not until 1925 was a draft code finally submitted to the Reichsrat. Approved there, it went to the Reichstag, where so much delay ensued that, even yet, final action has not been taken.<sup>3</sup>

<sup>1</sup> An excellent English translation is to be found in C. H. Wang, *The German Civil Code* (London, 1907). For commentary, see E. J. Schuster, *Principles of the German Civil Law* (Oxford, 1907), and for bibliography, E. M. Borchard, *Guide to Law and Legal Literature of Germany* (Washington, 1912).

<sup>2</sup> See article "German Civil Code," by J. W. Hedeman, in *Encyc. of the Soc. Sci.*, VI, 634-636.

<sup>3</sup> H. B. Gerland, "The German Draft Penal Code and Its Place in the History of Penal Law," *Jour. of Compar. Legis. and Internat. Law*, Feb., 1929.

The system  
of courts

Under neither Empire nor Republic has Germany had two parallel systems of courts, one national and the other state, on the pattern of the United States. Since 1869, to be sure, there has been a *Reichsgericht*, or national supreme court, sitting at Leipzig; and the Weimar constitution provided that "ordinary jurisdiction" should be exercised by this tribunal and the courts of the *Länder*.<sup>1</sup> Justice has regularly been administered, however, under Empire and Republic alike, in courts maintained by the respective states (present *Länder*) and rendering judgments in their name. In the same breath, one must add that the state courts are under strong national control—particularly since the rise of the National Socialist dictatorship. Their form of organization is regulated by a national law dating originally from 1879; their powers are fixed by national statute; and their procedures must conform to the requirements of the national codes mentioned above. Judicial unity is further promoted by the fact that judgments and orders of the courts of one *Land* must be respected by the courts of all of the others, and that the Reich has full control over the right of appeal. The national authorities have not provided that appeals may be taken from the highest state courts to the national supreme court in all types of cases; but it is within their power to go as far in this direction as they like. In sum, the country's judicial system still bears the historic federal stamp, but is now as a matter of fact decidedly unified and centralized.

The ordinary  
courts:

1. District  
courts

All told, there are four categories or varieties of courts, only one of which is a post-war product. These are: (1) ordinary courts, (2) special courts, (3) administrative courts, and (4) the *Staatsgerichtshof*, or High Court of State.<sup>2</sup> The ordinary courts start with the district, or local, tribunals (*Amtsgerichte*)—1,731 in number in 1931—which exercise original jurisdiction, both civil and criminal, in minor cases. Damage suits involving less than a thousand marks and controversies arising out of labor disagreements, real estate transfers, and domestic and personal claims are among the civil matters which they handle; while their criminal jurisdiction covers trespass, misdemeanors, and

<sup>1</sup> Art. 103.

<sup>2</sup> Except in so far as affected by the extension of control by the national government over the *Länder* in and since 1933, the system as here described is still (1934) intact. There is, of course, no guarantee of its permanence.

other offenses involving prison sentence of ten years or less. Supervision is exercised also over a number of non-contentious matters, such as land-title registration, guardianship, and other probate business. The *Amtsgericht* has but one judge, and it does not make use of the jury, except that in reaching decisions in more important criminal cases the judge is assisted by two private citizens, chosen by lot, who sit with him as lay justices (*Schöffen*), and who, at least theoretically, have equal voice with him in determining verdicts.

Next above the *Amtsgerichte* are the "state courts," or *Landgerichte* (159 in 1931), each composed of a president and a varying number of associate judges. Each, also, is divided into a civil and a criminal chamber. There may, indeed, be other chambers, as for example a *Kammer für Handelssachen*, or chamber for commercial cases. The *Landgericht* has extensive original jurisdiction in civil matters, and also hears appeals, both civil and criminal, from the inferior tribunals. For the trial of many kinds of criminal cases over which the *Landgericht* has original jurisdiction, there are special *Schwurgerichte*, or so-called "jury courts," established in connection with the *Landgerichte*. Strictly, these courts are not jury courts in the Anglo-American sense of the term, since the six jurors who assist the three professional judges act as associate lay justices both in the conduct of the trial and in the determination of the penalty to be imposed.

2. State courts

The highest state courts are the *Oberlandesgerichte*, of which in 1931 there were 27, each divided into civil and criminal chambers composed, according to the type of case under consideration, of three or five justices. These tribunals have original jurisdiction in criminal cases of considerable gravity, assigned to them by the *Reichsgericht*. The bulk of their work, however, consists in reviewing contested decisions of the lower courts.

3. State superior courts

At the apex stands the *Reichsgericht*, which, among the ordinary courts, is the only one of strictly national character. In civil matters, this Reich supreme court reviews the decisions of the higher state courts and disposes of complaints against the refusal of the latter to entertain appeals from the *Landgerichte*. The criminal chambers may exercise original jurisdiction in cases involving high treason, and may review contested decisions of the *Schwurgerichte*, or state jury courts. Furthermore, it is this

4. Reich supreme court

tribunal that, on request of either the Reich or a *Land* government (and, by usage, of a private individual as well) decides whether a state law is, in its subject-matter, consonant with the constitution and with Reich law. With a bench of 102 judges, this supreme court, capping the system, is, like the Court of Cassation at Paris, an imposing judicial body.<sup>1</sup>

German  
judges

As in the case of other European countries, Germany has never followed the practice of most American states in filling the benches of the ordinary courts with judges chosen by popular vote. It has been, and still is, the German (as also the French) theory that service on the bench should be a life profession, prepared for by long and special training, and offering adequate guarantees of permanence of tenure and independence of status. Until 1933, all judges were appointed by the authorities of the respective *Länder*, or, in the case of the *Reichsgericht*, by the national president upon recommendation of the Reichsrat; more recently, appointment has been by national authorities only. Training and qualifications are prescribed by national law, with the various *Länder*—until 1933—increasing the requirements as they wished. As a rule, the candidate devotes three years to university study, and then undergoes a rigorous examination. If he passes, he spends a second period of three years as an apprentice, during which time he is shifted from one court to another, until, at the end, he has spent several months in every type of court below the *Reichsgericht*. This second period is climaxed by another searching examination, after which, if successful, the assessor, as he is now called, may await appointment as a deputy judge, or (since the training for lawyers and judges is much the same) may begin the practice of law.<sup>2</sup> Until the rise of dictatorial government placed all established rights in jeopardy, those who attained the goal and received judicial appointment deservedly found their future status carefully guaranteed. Appointment was for life, and one might not be retired, or even transferred, except with his own consent. Salaries might not be reduced, and every possible immunity from administrative and legislative interference was provided. Furthermore, one whose

<sup>1</sup> For fuller accounts of the system, see F. F. Blachly and M. E. Oatman, *op. cit.*, Chap. xiii, and J. Mattern, *Constitutional Jurisprudence of the German Republic*, Chap. xiii.

<sup>2</sup> Judgeships are numerous—in 1931, a total of 10,095 in the three lower grades of ordinary courts.

rights in any of these respects was infringed had full legal means of redress. All in all, the position of the German judge reflected a whole-hearted attempt to achieve the utmost in judicial independence and impartiality.<sup>1</sup>

In pursuance of Article 108 of the Weimar constitution, a national law early established a *Staatsgerichtshof*, or High Court of State, to assume jurisdiction over certain specified types of cases. Litigation arising out of the transfer to the Reich of railways and of postal and telegraph systems was to be taken care of in this fashion, but also other more important matters. Impeachment may be dead in cabinet-governed countries generally, but it was intended to be kept alive in republican Germany; and cases involving impeachment proceedings against the Reich president, the chancellor, or a minister were assigned, not to a legislative body, after the American plan, but to a judicial court, the *Staatsgerichtshof* of which we are speaking. To the same tribunal was entrusted also the settlement of all constitutional questions involving differences between the Reich and the *Länder* over the execution of national law, disputes of other sorts between the Reich and a *Land*, or between *Länder*—when and if no other court was competent to handle them.<sup>2</sup> For the consideration of cases involving the utilities named, the court was composed of the president and one councillor of the *Reichsgericht*, one councillor from the Prussian superior administrative court, two persons chosen by the Reichsrat, and two chosen by the Reichstag; for impeachment proceedings, it consisted of the president of the *Reichsgericht* and one councillor each from the Saxon, Bavarian, and Prussian superior administrative courts, and three councillors from the *Reichsgericht*. As for conflicts between Reich and *Länder* laws, a Reich law of 1920 assigned the settlement of them to the *Reichsgericht* at Leipzig, thereby withdrawing this class of cases from the High Court.<sup>3</sup>

Special  
courts: the  
High Court  
of State

<sup>1</sup> *Gerichtsverfassungsgesetz* of January 27, 1877, as amended in 1898 and 1924, reprinted in H. Triepel, *Quellensammlung zum deutschen Reichsstaatsrecht* (5th ed., Tübingen, 1931), 449-453. Cf. O. C. Kniep, "Legal Education in Germany," *Amer. Law School Rev.*, May, 1925.

<sup>2</sup> Art. 15.

<sup>3</sup> Other special tribunals of the pre-Nazi period included a full hierarchy of *Arbeitsgerichte*, or labor courts, established by law of December 23, 1926. A national labor court (*Reichsarbeitsgericht*) heard appeals from 60 state labor courts (*Landesarbeitsgerichte*), and at the bottom there were 452 local labor courts (*Arbeitsgerichte*). Procedure in the lowest courts was as simple as possible, no repre-

Administra-  
tive courts

Germany recognizes the familiar distinction between ordinary law and administrative law, and, like other Continental countries, maintains separate courts for litigation arising under the two types. There has not developed, however, any unified scheme of administrative courts comparable with that existing in France. Instead, the Reich has a number of such tribunals, dating chiefly from the imperial period and charged with handling cases of certain specified types, *e.g.*, such as arise under national railway administration, military administration, and the enforcement of the laws on social insurance; while the *Länder* have had more or less elaborate systems of their own. The Weimar constitution contemplated the creation of a *Reichsverwaltungsgericht* which should head up administrative jurisdiction somewhat as does the Council of State in France, but no such tribunal has as yet appeared. The systems in the *Länder* have differed considerably. In smaller areas, there has usually been only one grade of administrative courts; in larger ones, two or three grades are found, organized as a rule in conformity with the existing arrangement of administrative divisions. In some *Länder*, the administrative courts are distinct in personnel from the administrative service, but in the majority such courts, even of first instance, are composed of administrative officials. Superior administrative tribunals vary in the same fashion, some being completely independent, some partly so, and some closely related, organically and personally, with either the state ministry or the courts of ordinary civil justice. Many German jurists regard the systematic unification of agencies for administrative justice (to be secured in part by the establishment of the proposed new national court) as an urgent need.<sup>1</sup>

It would not be expected that a country in which there has never been a complete unification of arrangements for admin-

stration by attorneys being permitted (in order that the laborer might meet his employer on an equal basis); and the presiding judge was required to have adequate knowledge of labor problems. The system was put into operation late, but the 441,243 decisions by *Arbeitsgerichte* in the single year 1931 testify to the free use of it that was made. See H. B. Davis, "The German Labor Courts," *Polit. Sci. Quar.*, Sept., 1929.

<sup>1</sup> F. F. Blachly and M. E. Oatman, *op. cit.*, 459-513; G. Lassar, "Administrative Jurisdiction in Germany," *Economica*, June, 1927. The subject of judicial review, which naturally suggests itself in connection with any discussion of the courts, has been dealt with in another connection in an earlier chapter. See pp. 693-695 above.

istering justice should have arrived at a uniform system of local government. To an even greater extent, indeed, than the courts, local government has displayed diverse forms in different sections of Germany, partly because of differing historical heritages, partly as a result of the division of the country into states which, even in their weakened position under the Weimar constitution, comprised areas with large autonomy as to matters primarily affecting only themselves. The remarkable thing, in view of the highly particularistic historical background and the looseness of the union existing even under the Empire, is that considerable advance was actually made toward something like a single recognizable style of local government before 1918. Centralizing tendencies under the Weimar constitution, not infrequently accelerated by reforms and economics made necessary by the economic depression, carried the development farther. And the Hitler dictatorship, while upsetting many existing arrangements and throwing the entire field of local government and administration into at least temporary confusion, seems certain, if it lasts long enough, to introduce a degree of nationwide uniformity never before experienced. With changes reported almost daily, and others known to be impending, the only feasible course in the present chapter is to describe local government arrangements and tendencies as existing up to 1933, *i.e.*, to the beginning of the dictatorship. As a result of the breaking down of the *Länder*, the glorification of centralized national authority, and the ban upon the instrumentalities of democracy, a far different picture will no doubt have to be drawn later on. As yet, however, the elements that will go into it are much too nebulous to be brought into any sort of focus.

Local government: diversity, yet some tendency toward uniformity

The first chapters in the modern development of local government in Germany were written in Prussia: and to a large extent the arrangements to be found throughout other parts of the country today are fashioned according to the Prussian model. High points in the growth of the Prussian system include (1) a comprehensive municipal ordinance of 1808 giving the towns more freedom and installing in them a new plan of government embracing elective burgomasters, administrative boards, and councils; (2) development, after the final recession of Napoleonic rule, of a substantially uniform system of rural and urban communes, grouped in larger areas known as *Kreise*, or circles;

Development to 1918



(3) division of the kingdom into ten provinces, each including two or three newly created *Regierungsbezirke*, or districts; and (4) introduction—at first (1853) in the six easternmost provinces but later in the others—of the famous three-class electoral system.

Shortly after the founding of the Empire, Bismarck turned his attention to a reorganization of local government; and while his measures were designed only for Prussia, they were copied to such an extent in other German states that the Empire was in time brought to substantially uniform arrangements in most larger respects. The Chancellor was, of course, no believer in democracy. The objects which he sought were rather economy and stability; and to this end he considered that local administration should be in the hands of not only a paid, expert bureaucracy, but also a considerable number of unpaid, lay officers drawn principally from among the large landowners and taxpayers. The obstacles to be overcome in realizing the plan—public indifference, opposition of the existing bureaucracy, sectional differences and antipathies—were enormous; but by proceeding slowly and in a conciliatory spirit, the Chancellor finally succeeded in carrying out his ideas. The first enactments, for the circles in 1872 and for the provinces in 1875, applied only to those provinces which had formed the old monarchy. But similar measures were extended during the next ten years to the remainder of the kingdom, and finally the task was completed, after Bismarck was out of office, by a great *Landgemeinde-Ordnung* issued for the seven eastern provinces in 1891.<sup>1</sup>

Situation on  
the eve of the  
Revolution

As it stood on the eve of the Revolution of 1918, local government in Germany was simpler than in earlier days, yet complicated enough; less arbitrary than formerly, but still decidedly bureaucratic. In the main, the authorities of the Reich kept hands off. As in the United States, the federal system erected a substantial barrier between national government and government in the localities. The function of general control was, however, exercised very effectively by the state governments; and while highways, poor relief, and some other matters were left mainly or entirely to the local areas, a far longer list—police, taxation,

<sup>1</sup> Bismarck's interest in local government reform was whetted by the writings of a leading German jurist, Rudolf Gneist, long a close student of English local government, and author of *Geschichte des Self-Government in England* (1863).

public domains, military matters, ecclesiastical affairs, and others—were managed exclusively or primarily by the states. Precisely as the Empire made large use of state functionaries in executing its laws, so the states relied heavily upon municipal and other local officials in administering their activities and interests. Thus in all except the largest of the Prussian areas of local government, the executive agents of the locality, elected therein, were also representatives of the central government. But, even when entrusted to the same authorities, state and local functions were kept strictly separate, and the former guarded jealously from the vantage-point of the capital. Furthermore, the large independence of officialdom from control by the elective assemblies so preëminently characteristic of the systems in the states was reproduced all along the line in local government. Therefore, wrote a close student of the Prussian situation in 1906, "whilst it would be inaccurate to say that local self-government, as understood in England, does not exist in Prussia, it is true that self-government there is weak, that it is not so much the exercise of the will of the locality within limits prescribed (for the protection of the whole community) by the central power, as the exercise of the will of the latter by the locality."<sup>1</sup> Except in the largest cities, local self-government was even more anaemic than in France.

The collapse of the Empire and the rise of the Republic ushered in a number of significant changes. General structural arrangements, to be sure, remained much as before; the casual visitor to the country would have seen little to suggest that there had been any change at all. But in the first place, democracy waved its wand over local no less than over state and national government, and for the first time the principle of popular control was enthroned. The notorious three-class electoral system, for example, totally disappeared. While, however, the people of provinces and towns were being admitted to self-government on democratic lines, the Weimar constitution and the laws enacted under it were withdrawing from them, actually or potentially, a large share of the more important matters over which they might have expected to wield control. The states, to be sure, were so greatly weakened that they were not likely thenceforth to interfere as much with local autonomy, by virtue

Great  
changes  
after 1918

<sup>1</sup> P. Ashley, *Local and Central Government* (London, 1906), 131.

of their own authority, as before. But the national government was granted powers of legislation and administrative supervision which, even if not utilized to the full, were certain to cut deeply into local rights of self-government. Consider, for example, the lengthy list of matters—poor relief, public health, employment, insurance, trade, industry, dramatic entertainment, and what not—upon which the Reich might legislate as freely as it liked. Note, too, the sweeping provision for Reich legislation to promote “public welfare” and protect “public order and safety.” Observe the powers to lay down fundamental principles as to education, real-estate laws, public corporations—even “matters relating to burial.” Recall the almost numberless provisions of that formidable portion of the constitution dealing with “fundamental rights and duties of Germans,” *i.e.*, the bill of rights. And bear in mind that in the execution of all national laws relating to these matters—a function left largely to the *Länder*, and by them passed on to the localities—the authorities at Berlin had broad powers of supervision and control. Not only, too, was the national government endowed with these powers; it exercised them, or most of them, on lines which steadily reduced the actual competence of the *Länder*, and by the same token left provinces, circles, and municipalities with steadily diminishing discretion. Local government was in its structural arrangements more democratic than formerly. It also had a wider range functionally. It was, however, so much less free and autonomous that in the average city or other jurisdiction far more expenditure was incurred every year for activities prescribed and regulated by national or state authority than for purposes within the decision and control of the inhabitants themselves.<sup>1</sup>

Structure of  
local govern-  
ment in  
Prussia:

1. The  
province

For purposes of local government and administration, all of the German *Länder* are divided into various types of regional units. In Prussia, as also in Hesse, the largest areas are termed provinces, a unit with which Bavarian *Kreise*, or circles, are also properly to be classified. Prussia contains 12 such provinces—Brandenburg, East Prussia, Posen-West Prussia, Hesse-Nassau, Hanover, Lower Silesia, Upper Silesia, Pomerania, Prussian Saxony, the Rhine Province, Schleswig-Holstein, and Westphalia—

<sup>1</sup> On the relations of German municipalities to the Reich and the *Länder*, see R. H. Wells, *German Cities* (Princeton, 1933), Chaps. vi–vii; B. W. Maxwell, *Contemporary Municipal Government of Germany* (Baltimore, 1928), Chap. ii.

to which, for completeness, should be added the territory of Hohenzollern and the city-province of Berlin, both for most purposes having the status of provinces.<sup>1</sup> Prior to 1933, each province had an assembly (*Landtag*), an executive committee (*Provinzialausschuss*), and a chief executive officer (*Landesdirektor* or *Landeshauptmann*). Elected for six years under a plan of proportional representation, the assembly legislated on matters within its field of authority; voted the provincial budget; supervised the administration of provincial affairs; levied taxes and borrowed money; and at the request of the *Land* ministry, it might indicate its views on proposed laws or on other matters referred to it for consideration. The members served without salary, but received allowances covering their expenses. The executive committee was a small body—with never more than 13 members—chosen by the assembly. In session more or less continuously, it supervised the execution of the assembly's decisions, appointed provincial officers, prepared the budget, and gave opinions and advice on whatever matters the higher authorities chose to submit to it. The chief executive officer, or director, was in a very real sense the business manager of the province. Chosen by the assembly with the approval of the state ministry, and paid a substantial salary, he represented the province in all of its official relations, managed the work of administration, and served in general as the person responsible for carrying out all policies of both the assembly and committee.

In addition to these agencies—all deriving their authority from the electorate—there were in each province other officials whose authority came directly and solely from the state government. Chief of these was an *Oberpräsident*, or chief president, charged with supervising the administration of state business in the province; and associated with him was a council (*Provinzialrat*) which functioned as an administrative court and aided the chief president in reaching decisions on police ordinances and other matters within its competence. Under the centralizing program of the Nazi dictatorship instituted in 1933, elective authorities in the provinces promptly disappeared and power passed completely into the hands of appointive agencies such as those men-

<sup>1</sup> On Berlin, see pp. 805-807 below. Prussian provinces are as large as many of the *Länder*, and considerably larger than the average English county or French department.

tioned—chiefly (1) the *Oberpräsident*, (2) the *Landeshauptmann*, and (3) a provincial council of 5 to 25, partly ex-officio and partly selected from persons of known loyalty to the régime by the Nazi-controlled *Land* government.<sup>1</sup>

2. Inter-  
mediate  
areas

Interposed between the Prussian province and the circle (*Kreis*), or county, is a unit known as the administrative district (*Regierungsbezirk*) which, unlike the province and the circle, has all along existed solely for purposes of state administration, not local self-government. Under the pre-Nazi régime, a district president, comparable with the French subprefect, headed a board of professional administrative agents and also a district committee (*Bezirksausschuss*) composed of the president himself and six other members, two appointed by the state government for life and the other four named by the provincial committee.

The circle, or county, was of two distinct types—urban (*Stadtkreis*) and rural (*Landkreis*), the urban county being normally a thickly populated area which an act of the state legislature had enabled to withdraw from the *Landkreis* to which it formerly belonged.<sup>2</sup> As in the case of the province, there was in each rural county an assembly (*Kreistag*), an executive committee (*Kreisausschuss*), and a county executive officer (*Landrat*). The assembly, chosen popularly, consisted of 20 or more persons who, within the narrower sphere of the county, exercised functions similar to those exercised in a broader area by the provincial assembly. The executive committee, consisting of a chairman and six other members, was elected by the assembly and served both as an agency of local self-government and as an organ of state administration. As for the *Landrat*, although he presided over the county assembly and committee, he was really a county prefect and was appointed by the state government, usually from nominees offered by the county assembly. The functions of county government were by no means unimportant, relating as they did in later years to such varied matters as housing, libraries, theaters, motion picture halls, hospitals, orphanages, light railways and tramways, water, gas, and electric works, saw mills, quarries, printing shops, warehouses, and

<sup>1</sup> For the law of July, 1933, on the subject, see J. K. Pollock and H. J. Heneman, *The Hitler Decrees*, 45-48.

<sup>2</sup> Until acts of 1927 and 1929 changed matters, an urban area which had attained a population of 25,000 could become a *Stadtkreis* by merely obtaining the consent of the Minister of the Interior.

banks—subject always, of course, to the deeply penetrating regulatory and supervisory authority of the national government as emphasized in a preceding paragraph.

Urban counties bore a good deal of resemblance to English county boroughs and, being to all intents and purposes cities, had governments which were organized on essentially municipal lines. The growing urbanization of the country combined with post-war financial difficulties of all governmental units to create some highly perplexing problems in city-county relations. Writing shortly before the period of dictatorship, an American observer said: "The German rural county (*Landkreis*) is . . . being subjected to attack from two sides. On the one hand, the small cities seek to become separate city-counties, so as to be free from the jurisdiction and control of the parent county. On the other hand, the absorption of choice suburban areas by the metropolis is a continual drain upon the county resources without any corresponding relief from county burdens. In consequence, the rural county tends to be reduced to a 'rump' and sooner or later must be combined with other similarly weak counties if it is to function effectively."<sup>1</sup> In view of similar situations existing in Great Britain and the United States, Germany's experience is of decided interest—particularly the plans which have been developing for consolidation of smaller and weaker counties into larger ones (*Grosskreise*).<sup>2</sup>

The smallest, and therefore basic, unit of local government and administration was the *Gemeinde*, or commune; and, with scant exceptions, every square foot of German soil belonged to one or another of the 63,556 (in 1925) petty jurisdictions of this nature. The average size was two to three square miles, or rather less than the average of communes in France; and barely 5 per cent had populations exceeding 2,000. Here also there were two categories—the *Stadtgemeinden*, or cities, and the *Landgemeinden*, or rural communes, roughly reflecting differences of population, yet based primarily upon legal definition. As rural communes grew in population and importance, they commonly were transformed by action of the state government into cities. Many a petty commune, however, which in centuries past won the proud title of "city" still clung resolutely to it. As in France,

3. The Commune

<sup>1</sup> R. H. Wells, *German Cities*, 181.

<sup>2</sup> Various consolidations have already taken place. See R. H. Wells, *op. cit.*, 181.

the typical rural commune consisted of a village surrounded by farm or forest land. The smallest ones had no representative bodies, and, like certain Swiss cantons, conducted their affairs through the medium of a primary assembly of electors. Larger ones had an elective council (*Gemeindevertretung*); also a director (*Vorsteher*), who, together with a varying number of aldermen, was chosen by the council. The director prepared the budget and submitted it to the council, supervised the execution of council ordinances, and saw to the performance of any functions that had been assigned to the commune by higher state or local authorities.

Local gov-  
ernment in  
other *Länder*

The Prussian model had been copied widely throughout the Reich. Nevertheless, the local government structures of the other *Länder* showed numerous variations; and the observer was further perplexed by the frequency with which, on the one hand, different names were borne by agencies and offices of virtually identical character, and on the other, identical names by agencies and functions that were really unlike. As has been noted, the province existed in Hesse and also in Bavaria, although in the latter case it was not called such. Elsewhere, the largest division was commonly the *Kreis*, which was sometimes a unit of self-government and sometimes a unit of state administration, but as a rule combined both functions. Between the *Kreis* and the commune there were, in practically all of the smaller *Länder* (Saxony, Württemberg, Baden, Hesse, etc.), variously named districts, which, like the *Kreise*, were usually units of both state administration and local self-government, with the familiar elective assemblies, executive committees, and chief executive officers.<sup>1</sup>

The govern-  
ment of  
municipal-  
ities:

As has appeared in earlier chapters, the structure of municipal government in both England and France is almost absolutely uniform.<sup>2</sup> This is not true in the United States, where we have as many as three main types, *i.e.*, mayor-council, commission, and manager. No more has it been true in Germany, where, according to a native writer, no fewer than 12 different forms were recently to be found.<sup>3</sup> Here also, however, the many varieties,

<sup>1</sup> For somewhat fuller general surveys of local government and administration, see R. H. Wells, *op. cit.*, Chap. ii, and F. F. Blachly and M. E. Oatman, *op. cit.*, Chap. x.

<sup>2</sup> See pp. 388, 622-623 above.

<sup>3</sup> O. Benecke, "Reform der Städteverfassung," *Berlin Vossische Zeitung*, Mar. 21, 1930.

upon closer inspection, resolve themselves into three principal types, termed by an American authority the magisterial form, the mayor form, and the council form.<sup>1</sup> Furthermore, although even Prussia failed to develop a uniform municipal code, the influence of the most prevalent form in that state—the magisterial—was such as to cause it to be widely copied in the municipal codes of other states.

The distinctive feature of the magisterial plan, as compared with the others, was the use of a group of “magistrates” both as the chief executive organ and as a second chamber of the municipal legislature, resulting not only in a union rather than a separation of powers, but also in a bicameral legislative arrangement totally foreign to English and French municipal systems and found in these later days in but few American cities, notably New York. The machinery consisted in its major parts of (1) a council, (2) the collegial *Magistrat* just mentioned, and (3) a *Bürgermeister* (burgomaster), or mayor. Composed of from 11 to 100 unpaid members, depending roughly on the population of the municipality, the council was elected (as required by the Weimar constitution) by universal suffrage, according to the principle of proportional representation; and the term was four years. Far more democratic than before 1918, the council as a rule contained representatives of the working classes along with professional and business elements; and although probably inferior to the council of pre-war days in ability, as it certainly was in experience, it was regarded as comparing favorably with similar bodies in the United States.

1. The magisterial form

The *Magistrat*, which has been termed the most indigenous and distinctive feature of German local government, consisted of the burgomaster and varying numbers of *Stadträte*, or magistrates, of whom roughly half were selected for their technical qualifications and paid for giving most or all of their time to the city's business, and the other half selected for more general qualifications and not paid. All were chosen by the council, the salaried quota for 12 years and the non-salaried for the four-year term of the council itself; and all, whether professional or lay, had the same legal status. Individually, the magistrates

<sup>1</sup> R. H. Wells, *op. cit.*, 33. As separate *Länder*, the city states of Hamburg, Bremen, and Lübeck had, by requirement of the Weimar constitution, a parliamentary style of government and hence do not come into the general classification.



functioned, as chairmen or otherwise, in connection with administrative committees,<sup>1</sup> and often as superintendents of schools, directors of public works, public health officers, or city treasurers. Collectively, they wielded numerous and weighty powers; for to the *Magistrat* it fell not only to enforce national and state laws, appoint municipal officers and supervise their work, manage municipal property, care for municipal funds, and represent the city in all of its dealings with public authorities and private individuals, but also to serve as a coördinate chamber of the municipal legislature, charged indeed with originating and preparing ordinances and other business (including the annual budget) for consideration by the council. Few decisions of the latter body could become effective without the *Magistrat's* consent.

Serving as chairman of the *Magistrat* and nominal head of the city government was the burgomaster, or mayor, chosen by the council, and charged with assigning the members of the *Magistrat* to the administrative committees and inspecting and supervising the entire municipal administration in the interest of harmony, efficiency, and economy. As merely *primus inter pares* among the magistrates, however, this officer had no significant independent appointing power, and no veto power except the right to hold up *Magistrat* decisions (subject to appeal to the higher administrative authorities) which he considered *ultra vires* or otherwise illegal. Though functioning under a system inherently different, the burgomaster bore some resemblance to the English mayor. The actual importance of both officials in given cases depended largely upon their personal qualities.

2. Other  
forms

A second general type of municipal organization (*Bürgermeisterverfassung*), found mainly in the Prussian Rhine province and in larger cities of some other parts of western Prussia and of Hesse and Saxony, differed from the foregoing in assigning the burgomaster a position broadly resembling that of the mayor in the familiar American mayor-council type, and indeed approaching at some points that of a city manager. There was, of course, an elective council; and it chose the burgomaster (and other principal executive officials) for terms of from six to twelve

<sup>1</sup> These were both standing and temporary, and composed either of members of the *Magistrat* exclusively or of such members along with councilmen, other city officials, and private citizens.

years. The burgomaster, however, was no mere *primus inter pares*. Combining the supervisory powers of the burgomaster and the administrative functions of the *Magistrat* under the foregoing system, he assigned the other principal officers to their posts and directed them as they carried on their work under immediate responsibility to himself. He could not veto measures passed by the council, but as presiding officer in that body he could wield considerable control over its proceedings.

A third form, introduced in Bavaria and Württemberg in 1919, looked in the opposite direction, *i.e.*, to fuller concentration of control, on English lines, in the hands of a unicameral council, and accordingly was known as the council type. Consisting of popularly chosen councillors (the number depending on the size of the city) and of one or more burgomasters with a group of professional administrators, the council, either directly, or indirectly through committees and its own administrative members, carried on the city government on lines showing no effective trace of separation of powers. In Bavarian municipalities, the burgomaster was chosen by the council, but in those of Württemberg by the general electorate.<sup>1</sup>

Each of the three systems outlined had its partisans and its critics. Most observers agreed, however, that the tendency in later years had been toward the mayor (*Bürgermeisterverfassung*) type, even in Prussia where the magisterial form was still in commonest use. Encouraged by the consolidating tendencies of the Weimar constitution, and especially of the Nazi régime, people who believed in uniform nation-wide regulation redoubled their efforts to procure the adoption of a single municipal code for the Reich; and the system most often proposed for imposition upon the municipalities everywhere was the strong mayor plan. Prior to 1933, definite action on this line seemed remote, mainly for the reason that, whereas practically all who urged it were wedded to some particular form of municipal organization, most people considered that if a single code were to be adopted at all, it should authorize a variety of plans sufficient to meet the varying needs and desires of different municipalities.<sup>2</sup> Under the

The question  
of a single  
municipal  
code

<sup>1</sup> C. S. Benson, "City Managers and German Burgomasters—a Comparison," *Nat. Munic. Rev.*, May, 1933; H. G. Hodges, "The Depression in German Cities," *ibid.*, Sept., 1932.

<sup>2</sup> B. W. Maxwell, *Contemporary Municipal Government in Germany* (Baltimore, 1928), Chap. xii.

dictatorship, anything is possible—even a uniform municipal code.

**Municipal  
suffrage**

In the days of the Empire, municipal government was, speaking broadly, no more democratic than national or state government. Control of local suffrage and elections was left entirely to the individual states, and although the regulations were far more liberal in some states than in others, property and tax-paying qualifications, the exclusion of women, and wide use of the three-class system of voting operated generally to keep electoral power in the hands of a comparatively small number of people. The advent of the Republic brought sudden and sweeping change. Having enjoined that the legislatures of the *Länder* should in all cases be chosen "by universal, equal, direct, and secret suffrage of all German citizens, both men and women, according to the principles of proportional representation," the Weimar constitution went on to require that, save for optional imposition of a residence qualification not to exceed one year, municipal elections should be conducted on the same lines. Upon this universal groundwork, the various *Länder* erected their electoral systems, introducing a few local variations to be sure, yet generally following the model of the Reich electoral system even where not required to do so. The resulting qualifications for voting were four-fold: (1) German citizenship; (2) age of 20, which, though not fixed by the national constitution, was adopted universally; (3) residence for varying periods in different *Länder* and cities, with just a touch of plural voting in Prussian cities where, under court decision, one might have several legal residences and vote in all of them; and (4) registration, which under German usage was a less bothersome requirement than in many American cities. Disqualifications were few, applying chiefly to the insane, soldiers and sailors while with the colors, and persons who by judicial sentence had been deprived of their rights as citizens.<sup>1</sup>

**Elections**

Elections were carried out under the general direction of the burgomaster or *Magistrat* (depending on the form of government), by whom the precincts were laid out, but actually and at first hand by a *Wahlamt*, or election office, an election committee, and a series of multi-partisan precinct election boards. According to Continental custom, they were invariably held on Sundays or

<sup>1</sup> R. H. Wells, *op. cit.*, 75-82.

holidays. As commonly in Europe, too, there was no regulation of nominating procedure, save that candidates must be put forward by petitions signed by from five to seventy registered voters as required in the particular jurisdiction; also that, election being by proportional representation, the candidates should be offered in party or group lists, each bearing some name by which the voters could identify it. Actually, of course, the lists were made up (in a wide variety of ways, and sometimes by devious processes) by the local party committees and managers; and the parties which appeared in municipal elections were in nearly all cases the same as those encountered in national politics. By guaranteeing secrecy of elections, the Weimar constitution put an end to public, oral voting such as had prevailed in Prussia and other states and made the use of written ballots obligatory. In some cities, the ballots were "official," *i.e.*, furnished by the government; in others, they were provided by the party organizations, which, in point of fact, must bear the cost of them in any case. Ballot papers were small, and when handed to the precinct chairman at the polling place must be enclosed in an envelope, which again was sometimes official and sometimes otherwise. The form of proportional representation employed was the traditional Continental list system (with slight variations); and the people voted only for lists, not for individual candidates, a feature which in some cities, as also in respect to Reichstag elections, provoked a good deal of dissatisfaction.<sup>1</sup>

The extraordinarily rapid growth of urban populations in Germany since the middle of the nineteenth century has given rise to no fewer than 50 municipalities having 100,000 people or more, and to many problems of annexation, centralization and decentralization, city-county relations, and government of metropolitan areas generally. Particularly interesting has been the experience of the Reich capital, Berlin. Seventy-five years ago, this city numbered barely half a million people. Today, it has more than four millions, being exceeded only by London and New York. It goes without saying that this phenomenal increase arose largely from the absorption of satellite suburban communities, a development which indeed has assumed such

The govern-  
ment of  
Greater  
Berlin

<sup>1</sup> Municipal elections and the rôle of political parties are treated fully and lucidly in R. H. Wells, *op. cit.*, Chaps. iv-v. Cf. B. W. Maxwell, *Contemporary Municipal Government of Germany*, Chap. iii.

proportions that the city is now the largest in area in the world excepting only Los Angeles. Not until 1920, however, was such consolidation—although discussed long before the war—found possible;<sup>1</sup> furthermore, the plan of government adopted at that time required drastic overhauling as early as 1931. The 1920 plan was essentially the magisterial system described above, providing in this instance for a council of 225 members (chosen from 15 districts), a *Magistrat* of 24 members, and two burgomasters, with, however, a division of the metropolis on lines then novel into 20 administrative districts, each endowed with certain powers and with the full governmental apparatus of a separate city.<sup>2</sup>

Changes in  
1931 and  
1933

Though offering endless opportunities for conflict between the central municipal authorities and the agencies of the districts, the scheme was hailed as an epoch-marking achievement. A little experience was disillusioning. Lack of centralized responsibility led not only to disputes but to misuse of public funds; the burden of public relief in a depression era grew and taxes mounted; and in barely a decade popular discontent rose to such a pitch that something had to be done. The remedy applied in an amending law of 1931 was, not the adoption of a wholly different system under a new charter law as many desired, but rather a tightening up of the existing system with a view to providing more unity and responsibility. The abnormally large council was left intact, and likewise the arrangement of administrative districts. The council's powers, however, were restricted and defined more clearly; the *Magistrat* was reduced to 18 members; the chief burgomaster was converted into a genuine administrative head; and a new organ, a *Stadtgemeindevausschuss*, or chief committee (of 45 members), chosen by and from the council, and presided over by the chief burgomaster, was endowed with many powers which it, as a sort of special committee of the council, was expected to be able to exercise more effectively than the larger body. The high quality of the early appointees to

<sup>1</sup> No fewer than 95 local authorities were abolished in the process, including 8 cities, 59 *Landgemeinden*, and 27 manorial estates. The resulting *Gross-Berlin* was detached from the province of Brandenburg and given the status of a separate province.

<sup>2</sup> For an English translation of portions of the law effecting these changes, see T. H. Reed and P. Webbink, *Documents Illustrative of American Municipal Government* (New York, 1926), 503-512.

the new posts subsequent to the reform furnished ground for hope that the complicated problems of the great metropolitan area would in the future be met more effectively. Whether this hope would have proved well-founded will never be known, for the reason that in 1933 the government of the municipality was taken under the wing of the Nazi dictatorship, a "state commissioner" being superimposed upon the city government, with a right to "raise objection to," *i.e.*, virtually to veto, any and all of its acts.<sup>1</sup>

<sup>1</sup>On metropolitan areas and problems in Germany generally, see R. H. Wells, *German Cities*, Chap. viii; on Berlin in particular, W. Norden, "Berlin's New Government," *Nat. Munic. Rev.*, Dec., 1931, and R. A. Egger, "Problems Confronting the Berlin Administrative Area," *ibid.*, Jan., 1930.

## 2. ITALY

### CHAPTER XXXVI

#### THE PRE-WAR FRAMEWORK OF PARLIAMENTARY GOVERNMENT

A conventional political system gains new interest

Twenty years ago, Italy was all but unnoticed by students of comparative government. Although ranked as one of the principal states of Europe, and endowed with a history of unmatched richness and significance, the kingdom had borrowed most of its political institutions from England and France, and such interest as it attracted hardly extended beyond casual and usually rather superficial inquiries into the extent to which the importations from abroad had taken root and how they were functioning in their new environment. The general impression was, and rightly, that a people ill-prepared by experience, education, and temperament had taken upon itself the responsibilities of popular government somewhat prematurely, and that parliamentary democracy as it existed in the peninsula was a tender plant which only the most favorable conditions over a long period of time could bring to sturdiness and fruition. King, ministers, Senate, Chamber of Deputies, suffrage, elections, parties, courts, local councils and administrators—all presented some features worthy of notice. Yet outside of a few such matters as the relations between Quirinal<sup>1</sup> and Vatican, there was little that was distinctive or especially challenging.

Nowadays, all is different. To be sure, not a syllable has been added to or stricken from a written constitution which has served the united kingdom since it first took its place in the family of nations three-quarters of a century ago. Much of the general setting of government looks as it did when King Victor Emmanuel mounted the throne in 1900. The monarch is still in his palace; ministers preside over executive departments; Senate

<sup>1</sup> The palace occupied by the royal family; figuratively, the civil or secular, as distinguished from the papal, power.

and Chamber of Deputies meet and debate; law courts hear cases and prefects carry on provincial administration. Great changes have, nevertheless, taken place. On the ruins of a discredited parliamentary system has been erected one of Europe's most famous dictatorships. All political parties save one have been banned. Democracy has abdicated and autocracy has mounted, not the throne where sits a helpless king, but the seat of an imperious prime minister in the Palazzo Venezia. In the dozen years since these things happened, a governmental system startlingly novel even when working through old forms has been substituted for that envisaged in the constitution, and a less revolutionary but yet largely unique economic order, based on syndicates (or unions) and corporations, has been interwoven with it. With Fascism in the saddle, it is proposed not merely to tide the country over a period of exceptional political and social stress, but to reorient it completely and permanently in the direction of a fully coördinated and regulated national life. Whether ultimate success will attend the effort remains to be disclosed. Already, however, the great experiment has lasted longer, and has been carried farther, than most people a decade ago considered possible. Already it has reduced the parliamentary order of past years to a mere historical form which one studies only as background for the present living régime.

The unification of Italy in the days of Mazzini, Garibaldi, and Cavour represents the triumph of an ideal over almost insuperable obstacles. The country is naturally far from compact and well-knit. Cut off from the remainder of the European continent by a towering Alpine barrier, it extends out into the Mediterranean a distance of nearly 700 miles. The Apennines divide it into dozens of regions, which in times past have had largely localized economic life, institutions, and loyalties. History has combined with geography to intensify this disunity. The remoter era of the so-called Dark Ages gave way in the eleventh and twelfth centuries to a period in which flourishing cities and expanding trade laid the basis for the development of a mosaic of communities, some of which achieved great wealth and power. But succeeding centuries brought only political discord. To the antagonistic ambitions and rivalries of petty rulers must be added the long domination of foreign monarchs over large sections of the country. And to these conditions of

The making  
of the Italian  
kingdom:



strife and weakness Italy remained prey long after her neighbors to the westward had begun painfully travelling the road toward unification.

1. Napoleon's contribution

Not, in fact, until the time of Napoleon were the seeds of unity really planted south of the Alps. Trampling alike upon Habsburg dominion in the north and Spanish Bourbon rule in the south, the restless Corsican experimented in Italy with the creation of a system of republics, abandoned it, and for a brief period brought the entire country for the first time since the age of Justinian under what was in fact, if not in name, a single governing authority. To the whole was extended the *Code Napoléon*, the new French administrative system, and numerous social and educational reforms. To be sure, the unification was brief, and when the wave of French conquest receded, reaction overwhelmed many of the new institutions and enterprises. Nevertheless, Italians had been given a new political vision.

2. From 1815 to 1848

Following the collapse of Napoleon's power, the victorious Allies tried at the Congress of Vienna to set the Italian clock back. Ten states reappeared, and two dynasties, the Habsburgs and the Spanish Bourbons, were found once more ruling, between them, nearly all of the country, only the kingdom of Piedmont-Sardinia being permitted to have an Italian dynasty, and even its ruler, King Victor Emmanuel, being pledged to a perpetual Austrian alliance. Between 1815 and 1848, absolute princes, often with foreign support, crushed all liberal movements. There were no constitutions and no parliaments, and every attempt to secure them failed dismally. Nevertheless, the *risorgimento*, or resurrection, came. The "Young Italy" movement, led by Mazzini, prepared the ground, and its leaders took advantage of the widespread revolutionary events of 1848 to secure constitutions (later repudiated) in Naples and Tuscany and, most important of all, the rather liberal *Statuto del Regno* of Piedmont. Granted by King Charles Albert, the latter instrument was upheld, against heavy pressure, by his son Victor Emmanuel II and remains today the written fundamental law of the united Italian kingdom.

This stubborn adherence to the principle of constitutional monarchy, backed by the far-sighted plans of Count Cavour, who in 1852 became the Piedmontese prime minister, made it

possible for Piedmont to lead the way toward a belated national unification. One by one, significant advances were made. Out of alliance with France against Austria, Cavour gained Lombardy but lost Nice and Savoy. In 1860, Tuscany, Modena, Parma, and Romagna cast in their fortunes with Piedmont. Aided by the exploits of Garibaldi and his famous "Thousand," the people of Sicily and Naples expelled their sovereigns and voted for annexation. Umbria and the Marches were occupied and annexed, and finally Venetia and Rome were acquired, the former as a result of the Prussian alliance of 1866, the latter as an outcome of the Franco-Prussian war. The capital was transferred, first from Turin to Florence, and afterwards to Rome; and in the Eternal City, in November, 1871, was convened the first parliament of a genuinely united Italy.<sup>1</sup>

The kingdom thus created had a population which has increased from 27,000,000 in 1871 to 42,874,801 in 1932 and is still growing at a net rate of between four and five hundred thousand a year. This is a large number of people for a country of the size, the more so when it is remembered that in an economic way Italy is less well favored and far less developed than any other European country of similar pretensions. There has been some growth of industry, chiefly in its lighter forms, but scarcity of fuel and raw materials, as also of working capital, requires that the great mass of the population continue to live by agriculture. Here again, however, the nation is handicapped. Large regions are too mountainous to be cultivated; in other sections, the soil is poor; extensive marsh areas can be made available only by heavy expenditure. Some parts of the country suffer almost as much from excessive smallness of peasant holdings as do others from the prevalence of the *latifundia*, with absentee landlords, which from time immemorial have been a prominent feature of the agricultural system. Notwithstanding earnest efforts of the present Fascist government to stimulate production by draining marshes, supplying farmers with seed and fertilizers, and promoting agricultural education, the output of foodstuffs, although larger than a few years ago, is not

The country  
and its people

<sup>1</sup> The story of Italian unification is told in many excellent works, such as B. King, *History of Italian Unity* (London, 1899); W. R. Thayer, *The Dawn of Italian Independence*, 2 vols. (Boston, 1893), and *Count Cavour*, 2 vols. (Boston, 1911); and G. M. Trevelyan, *Garibaldi and the Making of Italy* (London, 1911).

sufficient for the country's needs, and both maize and wheat are imported in considerable quantities. Even the heavy migration of pre-war times failed to relieve economic pressure completely, if for no other reason, because of the large proportion of emigrants who, having bettered their fortunes abroad, eventually returned home. After the war, the outflow declined (partly because of new restrictions imposed upon the admission of aliens into the United States, partly because of limitations upon emigration adopted by the Italian government itself), and in the recent years of world-wide depression it has almost stopped. Standards of living are necessarily low. Industrial wages are under those prevailing in Great Britain and France, and as for large sections of the rural peasantry, their condition would in most countries be viewed as wretched. As remarked by a recent writer, "through pitifully long hours, with no meat to eat, under a broiling sun, he [the agricultural laborer] scrapes together a livelihood of rice, greens, and (when it can be afforded) his favorite *pasta asciutta* (macaroni). Socially indifferent, unquestioning and politically irresponsible, forty million people, who are passive subjects rather than active citizens, seem sufficiently happy and contented, unwilling to disturb any régime, democratic or despotic, if only *si lavora e si mangia* ('one may work and eat')." <sup>1</sup> Such was a large part of the material from which it was attempted two generations ago to build a parliamentary democracy; such is much of it still in Fascist hands.

Turning now to this matter of government, we encounter at once the difficulty that whereas the old constitutional structure still stands, it has acquired a new tenant; in other words, within the framework of the pre-war system has developed a new and very different order of things. This being true, our procedure must necessarily be first to describe the system that was—portions of which, indeed, still survive—and afterwards (in the succeeding chapter) to show how it has been affected by the rise of Fascist dictatorship.

The constitution

Having been granted originally as a royal charter and afterwards extended without change over the areas successively brought into the growing kingdom, the constitution contains no provision whatever for its own amendment. In practice,

<sup>1</sup> H. R. Spencer, *The Government and Politics of Italy* (Yonkers, 1932), 19.

however, this omission has not proved troublesome. The instrument is brief, couched in general terms, and conceived on liberal lines; large scope for development is afforded without verbal change; and the principle has been generally accepted that the document shall not be allowed, because of its inflexibility, to bar the road to political progress. Italian jurists agree that not only usage but also ordinary legislation is an adequate source of constitutional law, and today there is virtually no recognizable distinction between the position held by the constitution and that of statutes of an organic nature. The *Statuto* has become merely a persistent nucleus imbedded in countless accretions of law and custom. Nor has this situation been altered as a result of the establishment of Fascist rule. Since no court can refuse to enforce an act of Parliament on grounds of unconstitutionality, there has been no legal obstruction to the multi-fold organic changes introduced since 1922—changes which in many instances may fairly be regarded as constitutional amendments. The only Fascist gesture toward conventionalizing the situation has consisted in the appointment in 1924 of a party committee to consider constitutional revision, a body from which (even after some reorganization) came nothing beyond a report leading to legislation defining the position of Fascist trade unions.<sup>1</sup>

In spite of the republican sentiments animating some of the leaders of the *risorgimento*, the circumstances surrounding the unification of the country plainly decreed that Italy should be a monarchy. The throne was in 1848 declared hereditary in the House of Savoy, the oldest reigning family in Europe; and the present king, Victor Emmanuel III, is a grandson of Victor Emmanuel II, under whom the unification took place. The position of the monarch as a constitutional ruler has in general been patterned on that of the English king, with actual executive power wielded largely by the ministers. Circumstances in Italy, however, have been different from those existing in latter-day Britain, and the tenant of the Quirinal had from the outset—at all events prior to the rise of the Fascist régime—considerably more personal authority than has for a good while been

Kingship

<sup>1</sup> The text of the *Statuto*, in English translation, will be found in H. L. McBain and L. Rogers, *The New Constitutions of Europe*, 551-560, and W. F. Dodd, *Modern Constitutions*, II, 5-16.

enjoyed by the tenant of Buckingham Palace. For one thing, on account of the multiplicity of political parties, he had a wider range of choice in the selection of prime ministers. He was personally the commander-in-chief of the armed forces and might himself, if he wished, take the field at the head of his troops. He occasionally attended and presided over cabinet meetings, and he retained enough control over the ministers to be able to dismiss them even when commanding the confidence of Parliament, and also, upon occasion, to withhold approval of their acts. It was, indeed, the refusal of Victor Emmanuel in 1922 to sign the Facta ministry's proposed decree of martial law that made the Fascist revolution almost bloodless. In so refusing, the sovereign may have considered that he was acting in accordance with the true will of his parliament and people. But it is none the less certain that the step was a bolder one than would have been taken by a truly "constitutional" monarch. In Fascist days, the king has been pushed so completely into the background that paragraphers find his obscure and helpless position a theme for humorous thrusts, sometimes not untinged with pity.<sup>1</sup>

**The ministry** The *Statuto* naturally prescribed that the ministers should be appointed by the king; and, as in similar situations elsewhere, this came to mean that the sovereign selected the prime minister, who thereupon assumed the task of forming a government. There being (on account of the multiplicity of parties) no definite leader of a coherent opposition on English lines, the process by which ministries were formed—speaking still of the situation before the Fascists rose to power—was generally quite similar to that prevailing in France.<sup>2</sup> As in France, too, the inescapable coalition basis of ministries almost invariably spelled short tenure for ministerial groups. Throughout 74 years prior to 1922, there were no fewer than 67 ministries, almost one a year; and the expectancy of life showed no tendency to increase as time went by. Consequently, all of the criticisms on this score which can be lodged against the French system applied with at least equal force to the Italian. Parliament and the ministry were frequently at odds, and tenure of office was a

<sup>1</sup> See H. R. Spencer, *op. cit.*, 149-150. Cf. P. Winner, "The Italian King's Relation to the Fascist Dictatorship," *Curr. Hist.*, July, 1929.

<sup>2</sup> Even under the Fascist régime, a successor to Premier Mussolini would most likely be appointed in form by the king. The latter would certainly, however, have little if any voice in selecting the new incumbent.

matter of political bargaining rather than of constructive statesmanship. Plenty of times, a minister whose policies were unpopular in Parliament was ruthlessly dropped by his colleagues in an effort to prolong their own hold upon power. And while, as in France, the method of reconstructing ministries sometimes made the turn-over more apparent than real, there was always sufficient instability to make true ministerial leadership difficult to develop. All in all, the ministry was never in an enviable position. Erected from the first on the insecure foundation of coalition, it was exposed to royal interference; it faced the menace of unregulated interpellation; and it might at any time, practically without notice, be confronted in Parliament with a devastating issue of confidence.

In one important direction, however, Parliament normally stood ready to bestow power generously upon the ministers. This was in the matter of ordinance-making. Modelled upon the French pattern, the administrative system presupposed free exercise of this kind of power by king and ministers, and on plenty of occasions grants were expressly or tacitly made which would have amazed even persons quite familiar with the development of administrative legislation in other countries. The final text, for example, of a comprehensive electoral law of 1882 was never considered by the chambers at all. After debating the measure to their satisfaction, they simply gave the government authority to draw up a final draft and promulgate it by executive decree.<sup>1</sup>

The lower house of Parliament consisted at the end of the World War of 535 members chosen by direct vote and secret ballot. The nominal term was, as in France, four years, but—contrary to experience in that country—dissolutions had reduced the average life of parliaments to around three years. Deputies were not required to be residents of the districts from which they were chosen, but they must be citizens not less than 30 years of age, in possession of full civil and political rights, and not members of certain debarred classes, chiefly priests and salaried government officials. As in France, the electoral area had fluctuated. Down to 1882, the single-member-district plan was employed. In that year, the country was divided into

The Chamber of Deputies:

#### 1. Electoral arrangements

<sup>1</sup> On administrative legislation in Great Britain see pp. 135-139 above; in France, pp. 486-487 above.

135 districts, each returning from two to five deputies, though not on a basis of proportional representation. In 1891, the single-member system was restored, lasting until 1919, when the Nitti government introduced a plan of list elections, embodying for the first time the proportional principle.<sup>1</sup> This scheme, in turn, was used at only one election (in 1921), after which it gave way to novel forms introduced by the Fascists.

## 2. Suffrage

The suffrage was progressively widened through the use of a two-fold qualification, *i.e.*, a literacy test and payment of minimum amounts of taxes. In 1912, a sweeping extension almost completely abolished the property qualification, and even permitted illiterates to vote at the age of 30. The final step was taken in 1919, when universal male suffrage was established.<sup>2</sup> It may as well be remarked that this progressive extension of the suffrage did not come as a result of popular pressure. On the contrary, the mass of the people remained apathetic, demonstrating their indifference by a great amount of non-voting; in the parliamentary elections of 1919, for example, 48 per cent of the eligible electors stayed away from the polls.

## 3. Organization

In organization and procedure, the Chamber of Deputies showed few features that would be novel to a person familiar with parliamentary forms and ways at Paris. Chosen by the whole body of deputies, the president was to a rather surprising degree a non-partisan moderator. The committees, on the other hand, were made up, rightly enough, on a party basis. On the model of earlier practice in France, the deputies were for a time divided by lot every two months into nine *uffici* (sections), which in turn designated from their number the members of all committees. As in France, the plan naturally failed to give representation to parties in proportion to their strength; and by 1920 it so completely broke down that a new scheme of standing committees, nearly all corresponding functionally to some one of the executive departments (again as in France) was adopted. Thenceforth, the party groups nominating the committee members were the true *uffici*, and the committees faithfully reflected the party complexion of the House—

<sup>1</sup> For a brief description, see H. L. McBain and L. Rogers, *The New Constitutions of Europe*, 102-108.

<sup>2</sup> Woman suffrage has, of course, been advocated, but, as in most other Latin countries, without success.

a fact which had its advantages, yet in view of the chaotic party situation, made for intra-committee discord rather than otherwise.

Aside from princes of the royal blood, who are members by right, the Senate as provided for in the *Statuto*—and as still existing despite the transformations undergone by other parts of the government since 1922—is composed exclusively of persons appointed for life by the crown. No limitation as to numbers is laid down, but only the regulation that appointees shall be not less than 40 years of age and taken from 25 specified classes of citizens, including nearly all categories of high government officials, members of various scientific and learned societies, persons who for three years have paid at least 3,000 lire in taxes, and people who “by their services or eminent merit have done honor to their country.” Nominees may be rejected by the Senate, although in practice little scrutiny has been exercised except to make sure that persons appointed actually belonged to the respective classes from which they were selected.

Although intended to be coördinate with the Chamber of Deputies in every respect except as to originating finance measures, the Senate long ago went the way of a good many other second chambers under parliamentary systems of government and fell to a distinctly secondary position. This has not been because of inferior quality of the membership; for much talent and capacity have been in evidence, and as a checking and revising agency the body (so long as Parliament was functioning normally) did useful work. Responsibility of the ministers to the lower chamber exclusively, however, left the Senate—the more by reason of its being non-elective—relatively weak. On more than one occasion when it showed a disposition to hold out against legislation desired by the government and approved by the Deputies, its spirit of independence was curbed by the creation of enough new senators to force it into line. As might be surmised, proposals for reconstructing the body’s membership have not been lacking. As early as 1866, a Senate committee suggested that the names of nominees be presented to the crown by the various groups from which the members are drawn. In 1892, it was proposed that the Senate itself present the names. More recently, in 1919, another Senate committee brought forward a plan under which the total membership should be fixed



at 360, including 60 named for life by the crown, 60 elected by the Senate, 60 elected by the Chamber of Deputies, and 180 chosen by special electoral colleges composed, on a regional basis, of representatives of local elective bodies, industry, commerce, agriculture, and labor. Neither this nor any other proposal has, however, been adopted.

The courts

Administration of justice offered from the beginning some difficult problems, especially such as arose from failure to unify the system of courts throughout the country and from resistance on the part of historic extra-legal associations of the nature of the Neapolitan Camorra and the Sicilian Mafia. As far as seemed feasible, both law and judicial organization were taken over from France, but with so many gaps and deficiencies that arrangements existing prior to the Fascist reforms mentioned below called forth few admiring comments. At the bottom of the scale stood the *pretura*, or magistracy, with jurisdiction in minor civil and criminal cases, and found in almost every one of the 1,535 *mandamenti*, or administrative districts. On a higher level stood a set of courts of first instance, one in each of 162 areas, and above these a set of superior courts, together with assize courts having, as in France, original jurisdiction in grave criminal proceedings. At the top—and herein lay a source of weakness—there was no single court of cassation on the French model, but instead a series of five such tribunals, located in the historic capitals of Turin, Florence, Naples, Palermo, and Rome, and all so independent that not only was there no appeal from one to another, but the decisions of one had no binding effect as precedents upon those of the others. The court at Rome, to be sure, had been assigned exclusive jurisdiction in appeals of certain types; but this did not go far toward giving it a definitely superior position. For the organization of administrative justice, France again furnished the model, but one not very successfully copied. A council of state was considerably less independent and powerful than its French prototype; while lesser jurisdiction was vested in the *giunta*, which was a court composed, in each province, of the prefect and certain assistants. A complaint continually heard about the judiciary as a whole was that it was too susceptible to influence on the part of the government. Judges could not be arbitrarily removed, but they could be summarily transferred; and it was asserted freely that the threat

of reassignment to an undesirable post commonly sufficed as a means of controlling all but the most conscientious of those who wore the judicial robes.

In local government again, French organization served as a model, both in the matter of areas and in the devolution of functions. Historic areas were swept away by the kingdom's founders, and new units, in four grades, were provided for: the province, the *circondaro*, the *mandamento*, and the commune. Of these, only the first and last had genuine vitality; the others were purely artificial, and largely useless.

Local gov-  
ernment and  
administra-  
tion

Of provinces, corresponding to the French departments, there were until recently 75, with average populations of around 570,000. At the head of each was a prefect—appointed by and solely responsible to the crown—to whom it fell to supervise provincial administration and to safeguard locally the interests of the central government, even to the extent of using pressure at election time. Such provincial autonomy as existed found expression in a council of from 20 to 60 members elected for six years, one-half retiring triennially. Beyond voting the yearly budget and exercising limited supervision over highways, public charities, and a few other matters, this body, however, had no real authority. Questions of political import were definitely barred from its discussions.

The *circondaro* and *mandamento* corresponded, respectively, to the French *arrondissement* and canton. Created chiefly as units of fiscal and judicial administration, they indifferently served their limited purposes, at no time developing into units of substantial importance from the viewpoint of either the government or the people.

At the bottom was the commune. Some 8,000 in number before the war, each of these basic units had a *sindaco*, or mayor, and a council of from 15 to 80 members, elected for terms of six years. In addition to two regular sessions annually, councils in more important places held frequent special sessions; and there was in all cases a permanent committee which supervised the execution of the council's resolutions and drafted the budget. Council authority pertained chiefly to maintenance of streets, roads, and markets, elementary education, poor relief, police and prison regulations, vital statistics, and a number of miscellaneous permissive activities. Roughly equivalent to the French

*maire* was the Italian *sindaco*. In all cases after 1896, this official was chosen by the communal council—a circumstance, however, which did not cause him to be regarded any the less as a functionary of the national government. Once elected, indeed, the *sindaco* could be removed from office only with the consent of the prefect.<sup>1</sup>

Quirinal and  
Vatican

The unification of Italy solved numerous problems, but it created one new situation which long embarrassed and perplexed the civil authorities. Totally unreconciled to the occupation of Rome in 1870, the Pope ceaselessly protested against the position into which this event had forced him. The government, it must be conceded, did its best in the interest of conciliation. Early in 1871, a comprehensive Law of Papal Guarantees undertook to assure the Pope full sovereign rights on an equality with the king. Permanent and tax-free possession of the Vatican and Lateran palaces with all appurtenant buildings (including Saint Peter's and the villa of Castel Gandolfo) was conceded, and within these areas no government agent or dignitary was to set foot, much less exercise any form of control. An annual subsidy, too, of 3,225,000 lire (\$645,000) was pledged, to compensate the Holy See for the loss of revenue caused by extinction of its temporal dominion. These and other concessions, however, were summarily rejected by the indignant Pontiff, who chose, rather, to regard himself as a prisoner in the Vatican and refused so much as to set foot on soil controlled by the civil authorities. Moreover, he sought by successive decrees to restrict, and finally to prohibit, Catholics from voting and holding office under the government. In time, this ban on political activity was partially removed. But until the advent of Fascism, direct and friendly relations between Quirinal and Vatican were never found possible.<sup>2</sup>

Successful operation of parliamentary government presup-

<sup>1</sup> For fuller accounts of the general governmental system as it stood on the eve of the Fascist régime, see F. A. Ogg, *The Governments of Europe* (rev. ed.), Chap. xxix, and A. L. Lowell, *Governments and Parties in Continental Europe*, I, Chap. iii. H. R. Spencer, *The Governments and Politics of Italy* (Yonkers, 1932), is an admirable treatise describing the system as modified at the hands of the Fascists. The same is true of P. Chimienti, *Droit constitutionnel italien*, trans. into French by J. E. Grâa (Paris, 1932), except that this volume should be used with understanding of the fact that it was prepared as a Fascist text-book.

<sup>2</sup> For fuller discussion, see F. M. Underwood, *United Italy* (London, 1912), Chaps. xi-xii.

poses a system of nation-wide parties more or less accurately reflecting the divergences in political and economic views of the electorate. It is not surprising that in pre-Fascist Italy no such system developed. The traditions of localism were too powerful; political experience was insufficient; the spirit of faction was too strong. There was no lack of so-called parties, but as a rule they did not develop beyond mere personal followings, with platforms or statements of principles commonly vague and meaningless. Intra-party discipline was notoriously lacking, and cabinet coalitions formed, dissolved, and re-formed with amazing frequency and facility. At no time did responsible party government in the English sense emerge, and save in exceptional instances, statesmanship was reduced to the exercise of a veiled dictatorship, depending for a day-to-day existence upon the adroit manipulation of coalition majorities. Deputies interested themselves chiefly in currying favor with their constituents by seeking and procuring appointments, pensions, and other benefits from the government; if these were forthcoming, the average member was all too willing to leave the shaping of national policies and programs to the ministers. At best, the situation was a sordid one, going far toward explaining the generally low tone of the country's political life.

Pre-Fascist  
parties and  
politics

From 1870, when unification was completed, to 1876, the nation's affairs were controlled by an ill-defined group of so-called Conservatives whose strength lay in Tuscany and the regions northward. During the next 20 years, the "Left," if one may so term it, was in the ascendancy. Its leaders—Depretis, Crispi, and others—were men of the south; and while the successive ministries ruled with the support of an incoherent group rather than of a party in any true sense, they succeeded in giving the nation's course a more democratic bent, and likewise a bolder slant in international policy. After 1896, the growing multiplicity of parties bore fruit in cabinets of amazingly composite character. The terms "Right" and "Left," as encountered in the party annals of this period must, however, be interpreted in a strictly qualified sense. There was no genuine conservative party. The quarrel between Quirinal and Vatican had banished clerical elements from the political scene, and accordingly the party groups of which one hears were without exception more or less "liberal." Had they been compelled to

Right and  
Left after  
1870

face a well-organized and strongly entrenched conservative party, they might have left off their petty bickerings over local and personal issues and formed a coherent *bloc* concerned with national affairs; and in this case the later political history of the country might have been different.

Rise of a Socialist party

For quite a long time there was not even an organized Socialist party. After the seemingly inevitable struggle between elements favoring revolution and those disposed to bourgeois co-operation had passed its earlier stages, Socialists of the latter stamp finally succeeded, in 1892, in securing an opening wedge of parliamentary seats. Progress, however, was slow. In 1895, there were still only 12 Socialist deputies, a number hardly doubled in the following decade. Nevertheless, little by little, the movement gained momentum, and at the election of 1913 the party polled almost a million votes and seated 44 deputies—a quota significantly raised at the first post-war election, in 1919, to 156.

Participation in politics permitted to Catholics

It was natural that growth of Socialism such as this should lead to a change in the attitude of the Holy See toward the participation of Catholics in Italian political affairs. In 1905, Pope Pius X issued an encyclical which made it the duty of Catholics everywhere, Italy included, to share in the maintenance of social order and permitted, and even enjoined, that wherever it became necessary to do so they should take an active rôle in elections, and even stand for office. To be sure, the ban was lifted only with qualifications. But, even so, important results followed. A Catholic party, entering the political arena with a distinctly anti-Socialist platform, gained some 35 seats by 1913—a development which, of course, merely stimulated and intensified Socialist opposition. Two months after the armistice, the Vatican went farther by officially sanctioning the creation of a new party, the *Popolari*, which, although by no means narrowly Catholic in its outlook and program, was organized and led by Don Luigi Sturzo, a Sicilian priest of exceptional vigor and capacity. Born amid the spiritual exaltation of the first months of restored peace, and composed principally of Catholic artisans and small landowners, the *Popolari* proposed to unite “all men free and strong” in the task of perpetuating and enhancing social justice and freedom. On an exceptionally explicit platform, embracing proportional representation, an elective

Senate, woman suffrage, and reform of the judiciary, it swept 101 of its candidates into the Chamber in its first electoral contest in 1919, a quota exceeded by only two other party groups.<sup>1</sup>

<sup>1</sup> On the creation and early successes of the *Popolari*, see Sturzo's own account in his *Italy and Fascism*, trans. by B. B. Carter (New York, 1926), 91-100. Political parties prior to the rise of Fascism are treated at some length in A. L. Lowell, *Governments and Parties in Continental Europe*, I, Chap. iv; F. A. Ogg, *The Governments of Europe* (rev. ed.), Chap. xxx; H. S. Spencer, *Government and Politics of Italy*, Chaps. v-viii; and F. M. Underwood, *United Italy*, Chaps. v-vi.

## CHAPTER XXXVII

### GOVERNMENT UNDER THE FASCISTS

Italy's post-war disillusionment

The meteoric rise of Fascism to power must be viewed in the setting of chaotic Italian post-war conditions. As in other countries, the first reaction to peace was one of exaltation and high expectancy. To this succeeded, however, as the hard truths of the nation's situation burned themselves into the public mind, and as disappointment followed disappointment at the Paris Peace Conference, a deep and bitter disillusionment. After losing one and three quarters million men killed and wounded and spending twelve billion dollars, the country was to receive only the Trentino, southern Tyrol, and part of Dalmatia—a mere fraction of the territorial gains which, according to expectation, were to have made it a colonial power on the scale of Great Britain and France. Debts were enormous, deficits piling up, taxes crushingly heavy. The lira was falling and living costs rising. Unemployment was mounting and economic life paralyzed. In place of the glittering promises that had been held out, there remained only tawdry reality.

The Socialists in the ascendant

First to capitalize the situation were the Socialists. Having never given more than grudging lip service to Italy's participation in the war, they swung far to the left after the fighting was over, and, encouraged from Moscow, threatened to capture complete control of the country, notwithstanding the efforts of Don Sturzo and his *Popolari* to hold the masses to a program of moderate reform. Abetted by the more radical trade unions, they organized strikes which paralyzed such industry as remained. They seized factories and held them, even where they had no means of running them. By "direct action" methods, they captured the government of commune after commune and launched municipal schemes and enterprises often poorly planned and involving outlays that could ill be afforded. In the elections of 1919, they secured the unprecedented total of 157 parliamentary seats. They had access to plenty of arms and might have attempted open revolution. That they did not do so was

due not to any threatening attitude on the part of the government, which from first to last remained apathetic, but partly to complete lack of military organization and leadership, and more particularly to profound differences of opinion among the numerous groups and wings loosely associated in the movement. Late in 1920, the factories were restored to their owners, and in 1921 the party congress refused to take a stand for revolution—to the disgust of a Communist wing which thereupon broke away and from then on shaped its course entirely under instructions from the Third International. But for nearly two years after the armistice, Socialism kept the country in uproar and many people believed a Bolshevik *coup* to be only a question of time.

Returned soldiers were aghast at the situation. It was not merely that few could find employment, or that the promised division of *latifundia* had not taken place. Rather, the feeling was that they had returned to a topsy-turvy world in which all that had inspired them seemed irretrievably lost, and, worst of all, deliberately repudiated. After the ordered discipline of military life, the laxity and misgovernment of civil administrations seemed all the more glaring. Profiteers were in power. Socialists who had shunned the war were occupying lucrative posts, experimenting recklessly with taxes wrung from toil-worn peasants, and joining with Communists in fomenting strikes ordered from Russia. Instead of respect and honor, the veterans encountered only scorn and contumely. "War medals were snatched from the breasts of those that dared to wear them; war-disabled men were jostled and insulted in the streets; officers were pelted with mud, and, appealing to headquarters, were advised by the government not to wear their uniforms in public."<sup>1</sup> Worst of all, the government itself, as has been said, was vacillating and impotent. The old policies of political manipulation that had served Premier Giolitti so well during a long if undistinguished career were manifestly ill-adapted for dealing with the problems created by a psychology of disillusionment and defeat. Moreover, the government agreed with the Socialists in taking a European, non-nationalistic attitude on questions of foreign policy—a course which seemed to the soldiers to invite only further insults and continued lack of prestige and power.

<sup>1</sup> H. E. Goad, *The Making of the Corporate State* (London, 1932). 43.



The rise of  
Fascism

It was in this soil that the seeds of Fascism grew. There were plenty of people in whom the reign of radicalism and disorder had bred deep revulsion against everything for which Socialism and Communism stood: first, the ex-soldiers; then the landlords and capitalists, who stood to lose everything if the country went the way of Russia; no less also those who owned small properties and carried on small scale industry and agriculture; also, nationalists who gloried in D'Annunzio's dramatic seizure of Fiume and disliked equally the internationalism of the Communists and the supineness of the government; and finally university graduates, professional people, and others who felt it high time for a housecleaning at Rome, to be followed by the establishment of a government that would command obedience at home and respect abroad. Starting among the ex-soldiers, who for a time formed its nucleus of active members, Fascism long drew its strength principally, not from industrial workers, but from the *petite bourgeoisie*. In the days when it was chiefly fighting Socialism and Communism, capitalists and small proprietors, although conscious of many differences, joined in supporting it as a bulwark against the radicalism which they alike abhorred. With the old governmental order paralyzed and the *Popolari* too much devoted to conventional political methods, and too cautious, to seem likely to be able to meet the situation, people who under ordinary circumstances could not have been brought together at all found themselves united hopefully under Fascism's banner.

Developing  
attitudes

From the founding of Mussolini's first *fascio di combattimento* ("fighting band") at Milan in March, 1919, to the triumphant and unresisted March on Rome in October, 1922, was a period crowded with interesting and significant developments, not the least important of which was the change of attitude which Fascism in these formative days itself underwent.<sup>1</sup> "At-

<sup>1</sup> Starting life as a revolutionary Socialist, active in forming labor unions and fomenting strikes, and often in trouble with the authorities, Mussolini, in 1910, became editor of *Avanti*, official organ of the Italian Socialist party. Like other Socialists, he at first opposed his country's entrance into the World War. Changing his mind on the matter, he was denounced as "bourgeois," and found it necessary to give up his editorship. Forthwith establishing a daily paper of his own, the *Popolo d'Italia* (later the official organ of the Fascist dictatorship), he joined the army as a private, was wounded in 1917, reappeared as a leader of demonstrations designed to force the government to adopt a stronger war policy, and in 1919 personally called the meeting of kindred spirits, chiefly disgruntled ex-soldiers, at

itude" is the word, rather than doctrine. For a main secret of the movement's success lies in the fact that the founder studiously refrained from saddling it in its infancy with a formal creed. Indeed, there was not even a program, except simply that of capturing power. "Our program," declared the leader shortly before the March on Rome, "is simple: we wish to govern Italy. They ask us for programs, but there are already too many. It is not programs that are wanting for the salvation of Italy, but men and will power." <sup>1</sup> And again: "Fascism is based on reality, Bolshevism is based on theory. . . . We want to be definite and real. We want to come out of the cloud of discussion and theory. My program . . . is action, not talk." <sup>2</sup>

Whereas, however, the movement in its initial stages smacked strongly of syndicalism, and hence was anti-capitalistic, it grew more tolerant of capitalism, although always supported by capitalists primarily out of fear of something worse. Whereas also it started off by being no less anti-monarchist than was Socialism itself, it came gradually to the view that kingship is for Italy a useful symbol of that national unity for which Fascism itself so preëminently stands. Whereas, further, it began by being anti-clerical, it ended by discovering that it had much in common with the Catholic Church and by making religious instruction compulsory in state schools. Whereas, finally, it at one time stressed popular sovereignty, complete liberty of opinion and propaganda, and severe limitations upon the powers of the executive, it is now found denying the right of the people to rule themselves through democratic procedures, repressing every manifestation of anti-Fascist thought, and exalting executive power to the level of unabashed dictatorship. Plenty of other changes of front could be cited, leading a good many critics to set down Mussolini himself and the whole Fascist régime as essentially opportunistic. Truly enough, as an English observer remarks, the Fascists "have shown a great capacity for changing their minds and adopting quite contradictory policies at different times." As the same writer goes on to argue, however,

Milan, at which Fascism, as an organized movement aimed at securing for Italy the fruits of her victorious part in the war and bringing about drastic changes in national economic and social policy, was definitely launched.

<sup>1</sup> Speech at Udine, September 20, 1922.

<sup>2</sup> See other expressions in B. Q. di San Severino (ed.), *Mussolini as Revealed in His Political Speeches* (London, 1923).

there is in the entire movement and its policies a real element of continuity upon which, rather than upon opportunism, its successes have been built. This element, as we shall see, is the concept of national unity and might.

The Fascists  
come to  
power

Opposing this vigorous nationalism to the disintegrating influences of Socialism and Bolshevism, the Fascists moved on to power. With the government merely looking on, they launched a campaign of organized terrorism in which castor oil, clubs, and guns were met with similar weapons in the hands of their adversaries. Systematic printed and spoken propaganda was directed to convincing the people that Fascism alone could redeem the country from its helplessness and save it from Bolshevism. Supporters of the cause were worked into office until the public services were honeycombed. In 1921, a National Fascist party was organized. The *fascies*, or bundle of rods surrounding a battle-ax, carried by the Roman lictors as a symbol of unity and strength, was adopted as an emblem, the black shirt as a uniform, *Giovinezza* ("Youth") as the official song. By October, 1922, the time was deemed ripe for a supreme bid for control. While Fascist militia was taking over cities in the north, Mussolini, now the accepted leader of a united and regimented movement, demanded of the Facta ministry that Parliament be dissolved, new elections held, reforms adopted at home and a strong policy abroad, and five cabinet posts assigned to Fascists. Finding the ministers still disposed to temporize, the leader announced at a national party congress in Naples that force would have to be used; and while he hurried to Milan, 50,000 Fascist militiamen embarked from various quarters upon the famous March on Rome. Summoning belated and now futile courage, the cabinet proposed a decree of martial law. Recognizing the realities of the situation, the king, however, refused to sign, thereby wisely determining that blood should not be shed in an effort that almost certainly would have proved futile. Instead, Mussolini was summoned to the capital, where by royal request he formed a ministry—not, to be sure, one composed wholly, or even mainly, of Fascists (they had at the time only 30 seats in the Chamber), but one of the usual coalition variety, containing in this case four Fascists and 11 Nationalists, Liberals, and other party men whose principal bond of union was their common antipathy toward Socialism and Com-

munism. "Tomorrow," the chief had said as he departed from Milan, "Italy will have not a ministry, but a government."<sup>1</sup>

The régime thus dramatically inaugurated was widely expected to prove of brief duration, particularly after the moderate elements, alienated by the methods pursued, began withdrawing their support. The Fascists soon demonstrated, however, that they were strong enough to stay in power without that support, and in point of fact, after more than a decade, the régime still survives, and not only survives but continues advancing from stage to stage in rebuilding the nation according to its principles and purposes. These principles and purposes have been worked out as experience progressed; for although certain general points of view dominated the Fascist movement from the first, it was encumbered, as we have seen, by no full-blown set of theories derived from academic speculation. Even today, notwithstanding that a considerable body of doctrine has been hewn out along the way, the régime is practical and empirical, doing things first and philosophizing about them only afterwards, if at all.

Fascist doctrine

Two or three main matters of doctrine must, however, be noted as fundamental. First is the fact that Fascism stands at the opposite pole from Communism, and in two main respects: (1) whereas Communism seeks, on Marxist or other lines, to uproot capitalism and with it the entire existing economic (as well as of course the political) order, Fascism aims primarily at recasting the political structure, while preserving capitalism and merely establishing new and closer relationships between the political and economic phases of national life; and (2) whereas Communism envisages a classless society devoid of national or racial frontiers except such as may be established merely for purposes of administrative convenience, Fascism condemns all such cosmopolitan philosophy and is frankly and aggressively nationalist.<sup>2</sup> In the second place, Fascism stresses and glorifies the concept and rôle of the state, particularly, of course (in the

<sup>1</sup> On the beginnings of the Fascist régime, see H. R. Spencer, *op. cit.*, Chap. ix; H. W. Schneider, *Making the Fascist State* (New York, 1928), Chaps. i-ii; P. Gorgolini, *The Fascist Movement in Italian Life*, trans. by M. D. Petre (Boston, 1923); for Mussolini's rôle, B. Mussolini, *My Autobiography* (New York, 1928); and for a hostile view, Don Luigi Sturzo, *Italy and Fascism*, cited previously. The technique of the Fascist revolution is interpreted in C. Malaparte, *Coup d'État* (New York, 1932), Chap. vii. An extended list of references will be found in Spencer, 294-297.

<sup>2</sup> The distinctions indicated hold also in lesser degree, and with certain qualifications, as between Fascism and Socialism.

case of the Italian Fascists), the Italian state. Far more than a simple aggregate of the individuals composing it, the state is, for Fascists, a great spiritual entity to which every individual, class, and organization must be consciously and willingly subordinated, and against which none has ultimately any inalienable and enforceable rights. "The nation becomes transfigured into a *corpus mysticum*, an unbroken chain of generations, armed with a mission which is realized in the course of the historical process. The duty of the individual is to elevate himself to the heights of the national consciousness and to lose completely his own identity in it. He has individual rights only in so far as they do not conflict with the needs of the sovereign state."<sup>1</sup> Duty and discipline are the watchwords of the citizen; authority and order those of the state.

A third fact is that while the Fascists thus exalt the idea of nationalism, and of the "totalitarian" state, they entirely repudiate the basic features of political organization of the national state as developed in Western Europe and in America since the era of the French Revolution. Democracy, popular sovereignty, parliamentary government, majority rule, minority representation, bills of rights, separation of powers—these are for the Fascist outworn dogmas, to be rejected as inherently unsound or, for these times, obsolete. There is no room for them in the Fascist state. As a recent writer has ably summarized the matter, "It is the explicit aim of Fascism to displace the enfeebling creeds of individual equality, freedom, and right by its own orderly doctrine of an organic, hierarchically constituted nation, whose few virile and discerning citizens hold the multitude of commonplace individuals in subservience to the realization of destinies more important and permanent than their limited hopes and beliefs can contemplate."<sup>2</sup> Manifestly, this is no democratic formula. The well-being of the Italian people is the grand objective. Mussolini has so declared repeatedly. But the road to well-being does not lie through the "morass" of parliamentary government.<sup>3</sup>

<sup>1</sup> E. von Beckerath, in *Encyc. of the Soc. Sci.*, VI, 134.

<sup>2</sup> F. W. Coker, *Recent Political Thought* (New York, 1934), 476.

<sup>3</sup> On Fascist political theory, see H. W. Schneider, *Making the Fascist State* (New York, 1928), 101-113; F. W. Coker, *op. cit.*, Chap. xvii; W. Y. Elliott, *The Pragmatic Revolt in Politics* (New York, 1928), Chap. xi; and for an interpretation by a prominent Fascist, A. Rocco, "The Political Doctrine of Fascism," trans. by Bigongiari,

Political parties in pre-war Italy were, on the whole, rather sorry affairs—ephemeral, poorly organized and financed, and not very effective. The Fascist party of today is of a different order. Not only is it the only party which is permitted to exist, but it is by all odds the dominating force in Italian national life. We shall see that the Communist party created the government of Soviet Russia and, having created it, runs it. Notwithstanding the surviving forms of pre-Fascist constitutionalism, the same is essentially true of the Fascist party in Italy. "All parties," Mussolini declared years ago, "must end, must fall. I want to see a panorama of ruins about me—the ruins of the other political forces—so that Fascism may stand alone, gigantic and dominant."<sup>1</sup>

Fascist party  
organization

Built up originally on a military pattern from local *squadre* and "centuries," the party has at all times had a very definite membership and a highly integrated form of organization. Conditions of membership are rigorous, involving, among other things, an oath to "obey without question the commands of *Il Duce* (the leader) and when necessary to shed blood for the Fascist Revolution"; and it has never been intended that the ranks should be enlarged indefinitely. In a country with more than 43,000,000 people, the party roll does not extend beyond something like 1,250,000; and according to an order issued by Mussolini in 1933, recruits will in future be confined to children of present-day Fascists and of their descendants, thus providing for what is to be essentially a closed membership. If, however, all auxiliary organizations of youth,<sup>2</sup> teachers, railroad men, and the like are counted, a total of not less than 5,000,000 men, women, and children will be found to have taken the oath of obedience. Party members proving remiss may be brought before a disciplinary tribunal and, if their offense is grave, may be expelled. In its organization, the party is totally devoid of any element of democracy. Even in the Russian Communist party,

*Internat. Conciliation*, No. 223 (New York, 1926). For Mussolini's own explanation, see article contributed by him to the *Enciclopedia Italiana* in 1932 and republished, in translation by J. Soames, as "The Political and Social Doctrine of Fascism," in *Polit. Quar.*, July-Sept., 1933.

<sup>1</sup> Quoted in W. C. Langsam, *The World Since 1914*, p. 320.

<sup>2</sup> The youth organizations are: (1) *The Balilla*, for boys between 8 and 14 years of age, (2) the *Avanguardia*, for those between 14 and 18, and (3) the *Giovine Fascisti* for youths between 18 and 21. In 1932, the total membership was 1,300,000.

the hierarchy is at least supposed to proceed upward from the will of the individual members. But in Italian Fascism it starts at the top and permeates downwards. The basic unit is the *fascio di combattimento*, the local lodge or chapter (some 10,000 in number) to be found in almost every commune, and above it the provincial association. The secretaries and all other controlling officers are, however, appointed directly or indirectly from Rome, with no initiative or control whatsoever left to the voters' organizations themselves. The head of the party, Mussolini, is, by his own proclamation, *Il Duce del' Fascismo*.<sup>1</sup> Associated with him are three principal central party organs—a National Council, a Directory, and a Grand Council. The National Council is a now quite unimportant organization of the provincial secretaries, in form representing the local organizations, but, composed as it is of persons appointed from Rome, reflecting no real concession to the principle of decentralization. The Directory is a group of nine men appointed by the party chief, and serving, under his chairmanship, in important ways (especially as to legislation) in connection with the third body, the Grand Council, which is by far the most important of the three.

#### The Grand Council

In the Grand Council, we come, indeed, upon a curious institution. It is, next to Mussolini himself, the highest party authority. Moreover, having been charged in 1928 with virtually appointing the members of the Chamber of Deputies, it was thereupon also given by statute a place in the governmental system, being indeed declared "the supreme organ coördinating all activities of the régime that resulted from the revolution of October, 1922." As it was reconstituted in 1929, there are three classes of members: (1) four Quadrumvirs of the March on Rome, appointed for an unlimited time; (2) various persons belonging by ex-officio right, *e.g.*, the presidents of the legislative chambers, certain cabinet ministers, the president of the Royal Academy, the president of the super-judicial Tribunal for the Defense of the State; and (3) varying numbers of persons appointed for three years by the head of the government, *i.e.*, *Il Duce*, from among those who have "deserved well of the nation and the cause of the Fascist revolution." The total number of members

<sup>1</sup> "Having created the Fascist party," says the leader, "I have always dominated it." *My Autobiography*, 296.

is usually about 20. We have said that, next to Mussolini, the Council is the highest party authority. The qualification, however, is the most significant part of the statement. To be sure, the law of 1928 makes the Council the body that to all intents and purposes chooses the Chamber of Deputies, and another of 1929 specifies that its advice shall be sought on a long list of matters, among which party affairs and government affairs are curiously intermingled. But by all testimony the Council plays a secondary rôle. It meets on call of the premier-dictator and is presided over by him; it discusses questions and proposals which he lays before it; no doubt it sometimes contributes information and arguments which sway decisions. But it is not a legislature, or an administrative body, or a court. It is only a consultative and advisory agency—first of all, for the party, and afterwards for the state. And whether the affairs be those of party or of state, or more likely compounded of both, it is *Il Duce* who at last determines what is or is not to be done. To put the most charitable construction on the situation, Mussolini and the Grand Council govern Italy.<sup>1</sup>

No one needs to be told that the rise to complete supremacy of a party built on the foregoing lines, and under the leadership of a Mussolini, has meant a transformation of Italian government from top to bottom. To be sure, the old forms largely survive. As a text, the *Statuto* stands precisely as a score of years ago. The king is still at the Quirinal. The list of executive departments is much as it was. The Senate is structurally unchanged. There is still (although there may not much longer be) a Chamber of Deputies. None the less, all is different; for to government that was parliamentary, even though not impressively successful through the years, has succeeded a system fairly to be described as dictatorial. A king with rather more power than parliamentary systems ordinarily permit has been pushed entirely into the back-

Fascist government

<sup>1</sup> Fascist organization in general is described at some length in H. R. Spencer, *op. cit.*, Chap. xii; P. Chimienti, *op. cit.*, 542-616; and more fully (with much attention to the party's technique of civic training) in H. W. Schneider and S. B. Clough, *Making Fascists* (Chicago, 1929). One special function the Grand Council has which deserves mention, *i.e.*, that of preparing and keeping up to date (under the direction of the chief of the government, *i.e.*, Mussolini) a list of names for succession to the headship of the government. This list, from which the Council is to present one name to the king in the event of a vacancy, is, of course, the device by which it is planned to take care of the much-discussed problem of succession to the present dictator.



ground—not deprived of certain of his ceremonial functions, it is true, but assuredly shorn of all discretion and influence. A party has so insinuated itself into the mechanism of government that no one can say with assurance where party leaves off and government begins. A group of ministers—all Fascists of unimpeachable zeal and loyalty—compose a cabinet in which the premier-dictator himself sometimes holds as many as seven or eight portfolios and in any event is, first and last, the controlling figure. The Senate has receded into an even more purely nominal and honorary position than it held in former days. Most important of all, the Chamber of Deputies has, by singular processes, been converted from a broadly representative body chosen by the nation on the conventional lines described in the preceding chapter into a body of hand-picked Fascist delegates prepared to rubber-stamp the policies and decisions emanating from the dictator's offices in the Palazzo Venezia. The framework of a new type of state—the “corporative” state—has been set up, and even the forms of traditional parliamentarism seem likely to be discarded.

Chamber of  
Deputies:  
electoral law  
of 1923

The fate that has overtaken the Chamber of Deputies, the essential basis of parliamentary government in past decades, is of special interest and significance. When first assuming power in 1922, Mussolini warned the body that thenceforth it would exist only on sufferance, and the steps by which he crushed out the autonomy of province and commune in the interest of thoroughgoing administrative centralization were matched by others by which he pushed Parliament farther and farther in the direction of powerlessness and oblivion. In 1923, a new electoral law introduced a system under which the party polling the largest vote throughout the country (provided that it be 25 per cent of all the votes cast) was to be allotted two-thirds of the seats in the Chamber, the remaining third being divided among the other parties in proportion to the votes cast; and when, in an election held in the following year, the Fascists polled 65 per cent of the total vote, they obtained something that no other party in the kingdom's history had ever enjoyed, *i.e.*, an independent parliamentary majority, prepared to put the stamp of approval on everything that the government proposed. When the Socialist deputy, Giacomo Matteotti, rose in the new Chamber and boldly denounced the validity of the elec-

tion, charging that the government had announced its intention to remain in office irrespective of the election's outcome, he promptly disappeared and was later found murdered.<sup>1</sup> This affair and its repercussions marked the end of the last vestiges of parliamentary government in any proper sense of the term. The indignant opposition deputies withdrew from the Chamber in a body, and those who afterwards indicated a desire to return were informed that they could do so only on condition of promising unreserved acceptance of Fascist rule. In 1926, Parliament was definitely deprived of the right to initiate legislation.

In 1928, it was decided to replace the old-style Chamber of Deputies with a new so-called "corporative parliament," and likewise the scheme of "unproportional representation" with an electoral plan making no provision at all for the representation of opposition elements. Under the remarkable arrangements which resulted, and which are still in effect, 1,000 names are proposed by national federations of Fascist syndicates and by certain approved cultural and charitable organizations,<sup>2</sup> and from this number the Grand Council chooses 400 to form a "national list" on which the people (functioning as a single nation-wide constituency) pass judgment at the polls. Needless to say, all persons nominated—certainly all whose names are placed on the final list—are loyal Fascists; and in the "campaign" which follows no opposition speeches are allowed to be made. The election consists merely of a nation-wide plebiscite on the list, the voters being asked to answer "yes" or "no" to the question, "Do you approve of the list of deputies designated by the national Grand Council?"<sup>3</sup> Should the list by any chance

Electoral system since 1928

<sup>1</sup> The crime was admittedly Fascist in origin and execution. A "trial" resulted in the acquittal of all but two of the alleged conspirators, and these were granted amnesty after serving two months in prison. For a stirring contemporary indictment of Fascism, see Matteotti's *The Fascisti Exposed; A Year of Fascist Domination*, trans. by E. W. Dickes (London, 1924).

<sup>2</sup> On the syndicates, see p. 837 below. Eight hundred names are offered by the federated syndicates (96 by agricultural employers, 96 by agricultural employees, etc.).

<sup>3</sup> The electorate is confined to male Italian citizens 21 years of age (18 in the case of married citizens having children) of the following groups: those who pay syndicate dues, or taxes amounting to 100 lire; those who receive a salary or pension from the state or from a province or commune; and clergy of the Roman Catholic Church and of other churches recognized by the state. The electorate numbers some 10,500,000, which is smaller by a fourth than in pre-Fascist days. Women have never voted in Italy, and are still ineligible.

be rejected, further lists, each containing names not to exceed 75 per cent of the number of deputies to be elected, are to be drawn up by the associations and presented to the electorate; and any such list obtaining a plurality of votes at the succeeding polling would be declared elected in its entirety, other lists being allotted the remaining seats in proportion to the votes polled. In the very unlikely event of this special procedure being resorted to, the Fascists could hardly do worse than capture the larger integral block.<sup>1</sup>

A Chamber of Deputies elected under regulations such as these has little claim to be regarded as a representative body, other than in form. With its members so chosen as to foreordain that it will be only a rubber stamp for the government, it provides no forum at all for clash of opinion and for criticism. Measures drafted by the Grand Council and the ministers may, to be sure, be discussed; amendments may be suggested and, if the government is willing, adopted. Occasionally, some little control over the administrative services is exerted in connection with voting the budget. The outstanding feature of the whole arrangement is, however, the thoroughgoing subordination of a one-party parliament to a government which regards the usual type of political parliament as, at best, a fifth wheel to the wagon. One will not be surprised to learn that late in 1933 announcements were made from Rome which indicated that Parliament, even in its existing attenuated form, would presently be a thing of the past, the purpose being to merge it with the National Council of Corporations.<sup>2</sup>

<sup>1</sup> The two elections thus far carried out under the system have been (1) that of March 24, 1929, in which, with over 89 per cent of the electorate going to the polls, the vote on the list submitted by the Council was: Yes, 8,519,559; No, 1,37,761; and (2) that of March 25, 1934, in which some 96 per cent of the electorate voted and the Fascist list was approved by 10,025,513 to 15,265. The Senate, it may be observed, continues as described in the preceding chapter, although non-Fascist senators rarely or never attend the sittings. Even so, resistance to government proposals occasionally develops, leading to the appointment of new senators (37 in a single batch in 1928) to overcome the difficulty.

<sup>2</sup> "The Chamber of Deputies," declared Premier Mussolini in a speech before the National Council on November 14, "has never pleased me. . . . It is an institution which we have found to be extraneous to our mentality and to our fashion as Fascists." In January, 1934, both Senate and Chamber of Deputies overwhelmingly endorsed the corporative plan, thereby presumably signing their own death warrants. On the subject of Fascist government, see, further, H. R. Spencer, *op. cit.*, Chaps. xv-xx; P. Chimienti, *op. cit.*, Pt. ii; and R. L. Buell *et al.*, *New Governments in Europe* (New York, 1934), 59-100.

Mention of this possibility brings us face to face with another major phase of the Fascist system, *i.e.*, that which has to do primarily with economic organization and life. No less concerned with economic and social matters than were Socialists and Syndicalists of pre-war days, the Fascists hold views of a diametrically different nature in at least three fundamental respects: (1) while insisting upon the ultimate authority of the state to regulate every aspect of economic and social life, they strongly uphold the right of private property and are disposed to leave economic matters as far as practicable in the hands of the private *entrepreneur*; (2) instead of seeking to suppress class identities and distinctions, with a view to an eventual classless society, they propose to perpetuate and stabilize classes, *e.g.*, workers and employers, as furnishing the varied and complementary elements from which a full-orbed state must be built; and (3) for them the classes in Italy (or any other national state) form a complete and self-contained group, with no true community of interest with classes, however similar, beyond the national frontiers.

The "corporate state"

1. Underlying concepts

Out of these concepts arises the Fascist scheme of syndicates and corporations, and ultimately the general plan of the "corporate state." One will not be surprised to learn that as soon as Fascism had the necessary power it broke up not only the rival Socialist and Communist parties, but also the predominantly Socialist trade-union system. This was not because it opposed the association of workers in unions. On the contrary, it actively encouraged such organization—in unions, however, established and regulated under Fascist leadership and fashioned in the Fascist image. By rapid stages, the field was occupied in all parts of Italy by newly formed "syndicates" of this type, composed exclusively, it may be added, of workers whose applications for admission had been approved by the local Fascist authorities, and not infrequently grouped in provincial or other regional associations. Not all of the working men and women of the kingdom are to this day enrolled in such syndicates—only, it is believed, about 66 per cent of them. Many, however, without being enrolled, are represented; and some belong to other syndicates of a non-socialistic nature, *e.g.*, Catholic syndicates, which are still permitted to exist. In pursuance of its theory of a society composed of distinct but correlated and complementary

2. The syndicates

classes, the Fascist government has been quite as much interested, however, in the development of syndicates of employers, of technicians, of professional people, and of functional groups generally; and with its active encouragement associations of these kinds have become a no less conspicuous feature of the Italian scene than are the "recognized" organizations of labor.

3. Federa-  
tions and  
corporations

But the plan does not stop with the mere formation of local organizations. From an early stage it contemplated the linking up of the syndicates in two significant ways. First of all, the separate elements, chiefly workers and employers, were each to be brought together in nation-wide federations of syndicates; and by law of 1926 a total of 13 such federations were given legal status—one each for the employers and the employees in industry, agriculture, commerce, banking, maritime and aerial transportation, and land transportation and inland navigation, and a thirteenth for associations of artists and other "intellectuals" or professional people who were neither employers nor employees—with the provision that additional federations (never more than one to an industry) might be formed upon the request of 10 per cent of the organized workers or employers in the activity concerned.<sup>1</sup>

In the second place, the different activities or industries were to be integrated by bringing together all of the syndicates existing in any particular one into a *corporazioni*, or "corporation," representing the industry as a whole. This portion of the plan has not as yet been carried to full fruition; but as early as 1923 a ministry of corporations was organized, in 1926 a National Council of Corporations was brought into being,<sup>2</sup> and by decree of 1931 seven of the projected corporations, representing major branches of production, were launched. The National Council of Corporations is composed of representatives of (1) the 13 federations of syndicates, (2) certain extra-syndical, but co-operating, welfare and similar organizations, and (3) the government (some 160 all told); and, as was indicated above, it is with

<sup>1</sup> "In 1930, the employers' syndicates had 1,187,828 members, but represented 4,327,760 employers. The workers' syndicates had a membership of 3,093,005, and represented 8,222,548 laborers. Of the 143,940 'intellectuals,' there were enrolled 75,790." W. C. Langsam, *The World Since 1914*, p. 324.

<sup>2</sup> Legalized only in 1930, in accordance with the familiar Fascist policy of setting up an agency first, seeing how it works, and giving it legal status, with definition of functions and powers, only if it proves a success.

this body, constituting a sort of general staff of the whole productive force to the country, that Mussolini apparently intends that the political Parliament shall presently be merged, thereby giving the body even more of a key position in the "corporative state" of the future—itself the most interesting experiment in government on functional lines that the world is likely to see in our time.<sup>1</sup>

It would hardly have been expected that a government with the view-point and vigor of the Fascist régime would leave untouched such important matters as justice and local administration. The changes actually introduced have in some instances been improvements, in others not so. Of chief advantage in the judicial domain has been the abolition of all of the five former courts of cassation except the one now left sitting at Rome as sole supreme tribunal. The jury system has been entirely suppressed, and the death penalty restored. Anti-Fascist judges have everywhere been replaced with loyal party men, giving rise to the inevitable charge that trials having any sort of political aspect are not conducted with scrupulous impartiality.

Fascist changes in justice and local government

Local government has been reorganized and centralized from top to bottom. The number of communes has been reduced to 7,312, and over each is now placed a *podestà*, or magistrate, appointed for five years by royal decree, and charged, under strict supervision of higher authorities, with the supreme direction of all local affairs. Communal councils have everywhere been abolished, except that in provincial capitals and other places of more than 20,000 inhabitants the *podestà* may consult with an appointive council of from 10 to 40 members. Appointments to these surviving councils are made by the prefect or the Minister of the Interior from a panel of names presented by local syndical organizations. The functions performed are purely advisory and can in no way limit or bind the *podestà*.

<sup>1</sup> Since 1928, of course, the Chamber of Deputies has been, in a sense, a mere shadow of the syndicates and corporations, because it is these organizations that at election time nominate four-fifths of the 1,000 persons from whom the Grand Council selects the 400 who are to be placed before the voters. The establishment of this electoral system in 1928 may therefore be regarded as a logical preliminary to the ultimate absorption of the Chamber by the National Council. On capital and labor, the syndicates, and the corporations, see H. R. Spencer, *op. cit.*, Chap. xxii; H. E. Goad, *The Making of the Corporate State*, Chaps. iii-v; H. W. Schneider, *Making the Fascist State*, Chap. iv; C. Haider, *Capital and Labor under Fascism* (New York, 1929).

Other changes in local administration are no less significant. The *circondaro* was abolished completely in 1926-27. All elective provincial councils have been replaced by consultative boards appointed by the central government. The powers, both political and administrative, of the prefect have been considerably expanded, though at every turn this key official appears as merely agent and instrument of Fascist authority.

Fascism and  
the church

Interestingly enough, in the perplexing domain of relations between state and church, the Fascist government has accomplished what its predecessors perpetually failed to achieve; a comprehensive settlement of 1929, known as the Lateran Accord, brought an end to the age-long quarrel, and to the self-imposed imprisonment of the Pope. All Catholic claims to the former Papal States were relinquished in return for Italian recognition of the complete political independence of Vatican City, an area of 108.7 acres,<sup>1</sup> containing the Vatican and Saint Peter's, and with a resident population of some 600. To this tiny state was confirmed all the trappings of sovereignty, including full legislative and executive powers, a separate flag and seal, a postal system, a coinage system, and complete immunity from interference by Italian governmental authorities. On financial lines, the agreement provided for payment to the Holy See of a lump sum of \$39,375,000, in addition to delivery of Italian 5 per cent government bonds to the amount of \$52,500,000—a transaction which finally disposed of all papal claims for indemnities arising out of the seizure of church property a couple of generations ago. The last feature of the settlement was a Concordat regulating the position of the Catholic church in Italy. Under this instrument, all cults are permitted to preach and practice their creeds, but the "Catholic and Apostolic Religion" is recognized as "the sole religion of the state." Religious instruction in the Catholic faith is made compulsory for children of Catholic parents, but education generally (including the selection of teachers and of text-books) is made a monopoly of the state. Civil marriage ceremonies are no longer to be required. Members of the Catholic clergy and religious orders, while permitted to support Fascist candidates, are forbidden to "join or take part in any political party." Bishops

<sup>1</sup> About one-fiftieth the size of Monaco, previously the smallest of independent states.

may be required to take an oath of loyalty to the government, but both they and the lesser clergy are to be exempt from all forms of military service, except possibly as chaplains.<sup>1</sup>

It would not be supposed that a liberty-loving people forty-three million strong could be regimented on lines such as those described in the foregoing pages without stirring criticism and opposition; and although this side of the picture has been kept as much as possible from the eyes of the world, there is no denying that the Fascist order has had plenty of opponents, or that its sponsors have freely resorted to means, more or less legal, of making the existence of such persons highly uncomfortable. From first to last, those who have criticized *Il Duce*, resisted his measures, or withheld loyal support have been effectively silenced. Some, like Matteotti, have been ruthlessly put out of the way. Others have been sentenced as political prisoners to Lipari and other inhospitable Mediterranean islands. Still others, including several men of distinction, have sought safety in exile, chiefly in Paris and Brussels. The press has been muzzled by an extremely rigid censorship applying to all forms of publication. All associations are under strict control, those which manifest any anti-Fascist tendencies being speedily dissolved. Hostile agitation of every kind is checked or prevented by a special Fascist militia which is essentially a political police force numbering more than 300,000 men. Punishment for political offenses is meted out by a special Tribunal for the Defense of the State, all judges of which are chosen from among officers of the Fascist militia. Non-military counsel for a defendant may be excluded upon demand of the prosecutor, and the judgments of the tribunal—even those involving capital punishment—are not open to review.

Repressing  
opposition

What of the outcome? Has the Fascist régime been a success? Will it endure? Will it, perhaps, collapse totally, once the hand of its maker has been removed? On all of these points, the widest

Difficulty of  
judging the  
system

<sup>1</sup> An English translation of the text of the Lateran Accord will be found in *Curr. Hist.*, July, 1929. Cf. Vera A. Micheles, "The Lateran Accord," *For. Policy Assoc. Information Service*, July 10, 1929, and G. Ireland, "The State of the City of the Vatican," *Amer. Jour. Internat. Law*, Apr., 1933. That difficulties may still arise over the respective spheres of church and state was evidenced by a somewhat unpleasant situation between the Palazzo Venezia and the Vatican in 1931-32. This particular friction has, however, been ironed out. See W. C. Langsam, *The World Since 1914*, pp. 337-339.



difference of opinion prevails, both in Italy and outside. Certain great gains have undoubtedly been realized. Under the strong rule of the Fascists, the country has been pulled back from the brink of anarchy and restored to a state of at least outward peace. The people have been put to work, and a rather substantial degree of national prosperity has been attained amid an era of world-wide depression. National spirit has been rekindled, popular pride in all things Italian recreated. Public policy is determined with a new expeditiousness and precision; administration moves with Napoleonic efficiency. The age-long problem of church and state has been substantially settled. Italy counts for more in the councils of Europe and of the world than perhaps at any time since the rise of the united kingdom. All of this, however, has been bought for a price. Popular government had achieved only a limited success in pre-war Italy, but such as it was, it is gone, and with it all genuine personal liberty. The sincere Fascist may find little to regret; but only because he is content to live and move in the groove marked out for him by his leaders. The non-Fascist must either hold his tongue and conform or accept imprisonment, exile, or worse. Of non-Fascists—at all events people out of sympathy with the existing régime—there are really, we are told, but few; the new order, we are assured, has the cordial support of an overwhelming majority of the population. *Émigré* opponents, however, bear different testimony. They tell of great numbers of Italians of all classes who, at heart hostile to the régime, merely endure it while waiting for its sudden or slow demise; and they insist that no government which so brutally stifles all free expression of opinion can possibly become a permanent feature of Italian political life.

Somewhere between the two contentions the truth must lie. But no man outside of the country—perhaps, indeed, no man inside—can put his finger precisely on the spot. About as far as the foreign observer, impressed with the teachings of history, can go is to surmise that a régime which depends upon a coerced, rather than a spontaneous, loyalty will hardly prove enduring in this modern, work-a-day world. This does not necessarily mean that Fascism will disappear, leaving no trace. Not only in Italy, but in other parts of central Europe—including notably Germany—Fascist ideas, ideals, methods, and processes are still gathering strength and moving to fresh victories. As a corrective

of governmental ineptitude, standing sorely in need of correction, Fascist rule may prove to have rendered a genuine service; and something of its better side may remain to color governmental procedures for a very long time to come. The turn of the wheel which brought it to the fore may not unlikely, however, eventually sweep popular government again into ascendancy, grounded upon chastened and refined parliamentary institutions.<sup>1</sup>

<sup>1</sup> Among noteworthy criticisms of the Fascist régime is G. Salvemini, *The Fascist Dictatorship in Italy* (New York, 1927); among notable defenses, L. Villari, *The Fascist Experiment* (London, 1924), and *Italy* (London, 1929). The first author is a former professor of history in the University of Florence, now living in exile; the second has been a Fascist propagandist emissary in London. Trenchant criticism is to be found also in Count C. Sforza, *Makers of Modern Europe* (Indianapolis, 1930), Chap. xxxviii, and *European Dictatorships* (New York, 1931), Chaps. ii-v. The author is an Italian senator who lives in exile and frequently lectures in America. An illuminating bit of reading is C. Haider, "The Meaning and Significance of Fascism," *Polit. Sci. Quar.*, Dec., 1933, elaborated considerably in the same writer's *Do We Want Fascism?* (New York, 1934), 74-130.

### 3. *RUSSIA*

## CHAPTER XXXVIII

### THE RISE OF THE SOVIET RÉGIME

#### Two Europes

Two Europes confront each other across the eighteen-hundred-mile boundary line which separates Finland, Estonia, Latvia, Poland, and Rumania on the west from the Union of Socialist Soviet Republics on the east. One is bourgeois and capitalistic, the other proletarian and communistic. So unlike, indeed, are the two that, in a sense, the closer one approaches the Russian border, travelling eastward, the farther off one is. In distant America, or even Britain, the Communist régime centering at Moscow is so remote that (the threat of world revolution having lost much of its force, at all events for the time being) it can be contemplated somewhat sentimentally, and even tolerantly. But Germans, Poles, and others who live within its shadow view it more realistically, seeing in it an imminent menace against which they must exercise the most unremitting vigilance. Upwards of twenty years of contact along the frontiers has necessarily resulted in a certain amount of accommodation; diplomatic relations have been established or resumed, and treaties of non-aggression lend new stability and assurance. The scarcely concealed purpose of the Communists, however,—working through the Third International,—to bring capitalism to its knees over progressively wider areas, and eventually to sovietize all Europe and Asia, must, for the peoples next door, remain a Himalayan barrier until it is either realized or abandoned.

As a political, economic, and social convulsion, the Bolshevik revolution of 1917 far transcended the French Revolution, and indeed every other revolution that the world has witnessed. Like the French cataclysm, it put an end to an old and powerful monarchy, swept an established church off its foundations, wiped out a privileged aristocracy, cancelled vast property rights, and challenged an entire existing order of economy and thought. But whereas the earlier upheaval, after momentarily threatening to

turn society upside down, ended by merely transferring political and economic power to the great middle-class elements of the country, the bourgeoisie, the later one struck down both the upper classes and such scanty middle-class elements as existed and thrust complete control not only of government, national and local, but also of the structure and processes of industry, transportation, and agriculture into the untried and untrained hands of the workers and their revolutionary leaders. The upshot was the rise of a governmental system absolutely unique in the annals of politics and of an economic order representing the greatest experiment of its kind in human history. The French Revolution worked itself out more or less in accordance with certain principles—liberty, equality, fraternity—which, to present ways of thinking, are, after all, not particularly radical; the Russian not only progressed in conformity to certain ultra-radical principles, but eventuated in a socio-economic program tantamount to a religion and in a plan of national life grounded on regimentation such as hardly any other people had ever known in mankind's long experience.

In theory, the Union of Socialist Soviet Republics, as it now stands, is not Russia, but precisely what the name implies—a federation of Socialist <sup>1</sup> states, Russian or otherwise, making common use of the soviet form of government; a German soviet republic might as readily belong to it as, for example, the existing Ukrainian Soviet Republic. In actual fact, however, all of the territory in the Union today was part of the Russian Empire before the Revolution, and although the two are not quite identical geographically (chiefly on account of war-time losses of territory to Poland and other states along the western border), the starting point for a study of the Soviet Union is manifestly the Empire of the tsars. An unbrokenly contiguous dominion of continental proportions covering half of Europe and a third of Asia (a sixth of the land surface of the globe), stretching ever monotonously before the eye, with the sharpest contrasts of heat and cold, flood and drought, opulence and misery; a chaos of races and creeds and a babel of tongues; historically in the main, but not wholly, European; geographically largely, but not entirely,

A polyglot  
"Eurasian"  
empire

<sup>1</sup> "Socialist," not in the ordinary West-European or American meaning of the term, but in the sense of "Communist." How this meaning arose will be explained presently.

Asiatic; a world within itself and a world between worlds—such was the Russia of pre-war and pre-revolution days. Known to the ancient Greeks as “outer darkness,” the land of the Scythian winter, the country has been no less an enigma, or riddle, to the modern world; Russians themselves find difficulty in explaining it. Even its European segment was of mixed origin. When, in the early centuries of the Christian era, that branch of the Aryan family known as the Slavs dispersed from its original home on the northern slopes of the Carpathians, those portions that did not turn westward to form the later Poles, Czechs, and Slovaks, or southward to become the ancestors of the Serbs, Croats, and Slovenes, poured eastward into the great plains of Ukraina and beyond, where they found and mixed with the Asiatic Finns, and later mixed also with the equally Asiatic Tartars who held the land in tribute for two hundred and fifty years. Increasing in numbers with that fecundity which still characterizes the Russian people, and spreading northward, eastward, and southward, they gradually subdivided, beginning in the thirteenth century, into the Great Russians in the north, the Little Russians or Ukrainians in the center, and the White Russians to the west.

Tougher than their brethren and more advantageously located for the purpose, the Great Russians became preëminently the pioneering, colonizing, conquering branch of the family. The eastward urge which quickly carried them to the Urals never died out; what the Far West has been for Americans, the East has ever been for Russians. Refusing to recognize the low-lying ranges as in any sense a boundary, they pushed on and on—particularly in the sixteenth century—until in 1639 their venturesome explorers, having traversed thousands of miles of Siberian waste, came out upon the Pacific coast at the mouth of the Ulya River. Indeed, the sea did not stop them; for Alaska was penetrated, and remained a Russian possession until sold to the United States in 1867. To Great Russians, Little Russians, Ukrainians, Finns, Jews, Letts, and Poles were therefore added Tartars, Bashkirs, Uzbeks, Turkomans, Mongolians, and what not, as constituent elements of the swarming, hybrid population of the expanding Empire, with the consequence that no fewer than 185 nationalities and 147 different languages and dialects are numbered within the bounds of the Soviet Union of today.

With one-fourth of the population purely Asiatic, with the dominating Great Russians themselves strongly infused with Asiatic blood, and with deep strains of Asiatic influence showing in every aspect of life and culture, it is not strange that men debated—without ever settling—whether Russia was to be regarded as Eastern Europe or Western Asia. Properly, the country should be looked upon as neither European nor Asiatic, but rather as “Eurasian”—a term to be construed, not as signifying a combination of all Europe and all Asia, but as denoting instead a sort of third continent, the geographic and historic area which is Russia, without reference to the conventional, and in this connection wholly artificial, distinction between Europe and Asia.<sup>1</sup>

For the beginnings and growth of the Russian state, the reader must be referred to the many excellent historical works dealing with the subject.<sup>2</sup> Suffice it to say that from among various rival grand-duchies and principalities, with governments curiously compounded of monarchical, aristocratic, and democratic elements, there emerged in the early fourteenth century one known as the grand-duchy of Moscow, whose vigorous rulers gradually gained primacy and in time not only delivered Eastern Europe from a long-endured Mongol overlordship, but extended their own sway from the Urals to the Baltic. Outgrowing the not particularly distinctive designation of grand-duke, Ivan IV (“The Terrible”), early in the sixteenth century, took to himself the title of “tsar” (a corruption of “Caesar”), suggestive—according to the Greek Orthodox divines whose faith had now been accepted in the country—of the “third Rome”<sup>3</sup> that Moscow was destined to become, and naturally of the imperial power which its master was later to wield throughout the Eastern world. Gradually the institutions of the earlier grand-duchy, which originally had been a good deal like those of a great private domain, evolved into a system of state administration; and for

Six centuries  
of political  
development:

1. The rise  
of tsarist  
absolutism

<sup>1</sup> The ethnological and geographical aspects of Russia's development are explained with exceptional clearness in G. Vernadsky, *A History of Russia* (New Haven, 1929), Chap. i.

<sup>2</sup> None is better than that of Vernadsky mentioned above. Others include R. Beazley, N. Forbes, and G. A. Birkett, *Russia from the Varangians to the Bolsheviks* (Oxford, 1918); B. Pares, *A History of Russia* (2nd ed., New York, 1928); and V. O. Kluchevsky, *A History of Russia*, trans. by C. J. Hogarth, 5 vols. (London, 1911-31).

<sup>3</sup> Byzantium, or Constantinople, was conceived of as the second.

hundreds of years, every circumstance surrounding the growth of the nation was favorable not only to monarchy, but to the upbuilding and maintenance of thoroughgoing autocracy. Most of the newer areas were brought in by conquest and required rigorous handling; the popular assemblies characteristic of the little grand-duchies of earlier times were not adapted to the needs of a broad, expanding, and increasingly heterogeneous empire; strong Byzantine influence, exerted through the church and other channels, prompted development of the pomp and exclusiveness always associated with the Russian court, and of absolutist principles and practices generally; the country was isolated and, until late, not much affected by Western influences.

2. Limited  
reforms

There were, to be sure, as time went on, some developments and experiments in the direction of liberal, and even representative, government. Some were merely gestures; some wrought significant changes for a time—but always with absolutism in the end reasserting itself. No less an autocrat than Ivan IV permitted a *zemski sobor*, or national representative congress, to be convoked in 1550. But the assembly did not establish itself as a permanent piece of political machinery, and at best was but an organ of the ambitious *boyars*, or nobles, rather than of the people. Another national assembly elevated the Romanov dynasty to the throne in 1613, and for a generation continued to be convoked from time to time to aid in raising money. But it entirely missed the opportunity to impose restraints on the new ruling family after the manner of the English Parliament when accepting William and Mary toward the close of the same century; and it never gained more than advisory functions. In 1730, Empress Anne signed a document granting executive powers to a council and then tore it up, convinced that, after all, the nation wished to be governed in the old way. Catherine II (1762–96) set up a “grand commission,” composed of 564 persons chosen throughout the Empire, to assist in a recodification of the national laws. But the body was not intended to be a regular parliament, and its deliberations proved so profitless that it was disbanded with its main task still unperformed. Alexander I came to the throne in 1801 with liberal ideas, including a plan for giving the country a written constitution, to be prepared by an elected representative assembly. As tsar, he, however, drew

back from the idea. Finally, Alexander II (1855-81), liberator of the serfs, came to a decision to establish representative national committees with power to give preliminary consideration to legislative proposals; but he was assassinated twenty-four hours before the time when the decree was to have been promulgated. Only in the domain of local government was any genuine and lasting advance made toward popular control of affairs up to the close of the nineteenth century. Catherine II introduced elective municipal *dumas*, or councils, representing all classes of the urban populations. Alexander II, in addition to reconstructing the judicial system and further reorganizing municipal government, instituted in 1864 two sets of elective *zemstvos*, or assemblies—district *zemstvos*, chosen by the landholders (including the newly emancipated serfs), and provincial *zemstvos*, composed of representatives of the several district assemblies within the province, and empowered to provide roads, schools, and experimental farms and to serve other local needs.<sup>1</sup>

The twentieth century found autocracy still in the saddle. Sometimes it was benevolent, but always it was autocracy, banning every liberal idea and setting itself resolutely against change. "Let all know," proclaimed the last of the tsars, Nicholas II, "that I intend to defend the principle of autocracy as unswervingly as did my father." "In theory," according to one very good description of the Russian political system as it stood a quarter of a century ago, "the tsar was the autocrat of all the Russias, his will was law, and to him both church and state were subject in every particular. The tsar was, of course, assisted by ministers in charge of the administration; but each minister was appointed by and responsible only to the tsar, the council of ministers had no organic unity, and the ministers came together only rarely and at the tsar's express command. It could therefore hardly be said that the ministers formed a cabinet. Moreover, the discretion allowed to ministers in matters of policy was slight. . . . But great as his powers might be in

Situation at  
the opening  
of the present  
century

<sup>1</sup> It should be added that the peasant villages (*mirs*) were practically autonomous until Alexander III (1881-94) placed them under the supervision of wealthy landed proprietors. The general development of government to the close of the nineteenth century is sketched in illuminating fashion in M. Kovalevsky, *Russian Political Institutions* (Chicago, 1902), Chap. ii. Cf. G. Vernadsky, *A History of Russia*, Chaps. iv-x, and P. Milyoukov, *Russia and Its Crisis* (Chicago, 1905).



theory, in practice the tsar could do little. During the quarter of a century before 1914, the actual direction of affairs fell into the hands of a court which was notorious throughout Europe for its corruption and for the prevalence of dark forces, while the routine work of government was carried on by a highly centralized bureaucratic machine which lumbered along in its autocratic fashion in spite of the almost incredible ignorance and dishonesty with which it was encumbered."<sup>1</sup>

Forces of protest, however, were increasing and growing more articulate. The zemstvos became rallying points of liberalism, and at their second general congress in 1904 called in no uncertain terms for a national parliament and for other innovations and reforms. Equally significant was the appearance of so-called political parties—not, of course, parties like those of democratic countries, but groups of agitators and propagandists with programs drawn on radical and rather theoretical lines, and reaching out for followings among the urban workers and peasants. First among these was the Workers' Social Democratic party, organized in 1898 on the model of the German Social Democracy, and subscribing in the main to the economic and political teachings of Karl Marx. A second, the Social Revolutionary party, formed in 1901, appealed primarily to the peasants. A third, the Constitutional Democratic party, organized in 1905 mainly by merchants, manufacturers, and middle-class intellectuals, based its program not upon Marx and Western socialism, but upon the political teachings of constitutional and democratic groups of Western Europe and America. All of these organizations existed contrary to law; all were forced to resort to under-ground methods and to lead a hand-to-mouth existence.

With criticism steadily mounting and social conditions growing ever more provocative of trouble, matters drifted until the imperial government unwisely led the country, in 1904, into war with Japan. Defeat followed defeat, on land and on sea, precipitating a popular reaction from which the forces of revolution and reform drew unexpected opportunity. So serious did strikes, riots, and other forms of public disorder become that in August, 1905, a government decree announced that a representative assembly, with deliberative though not legislative functions, and to be known as the Imperial Duma, would presently be estab-

Reforms of  
1905: the  
constitution  
and the  
Duma

<sup>1</sup> J. W. Swain, *Beginning the Twentieth Century* (New York, 1933), 112.

lished. As only a half-way measure, this concession, however, satisfied no one; and, conditions growing steadily worse, the harassed authorities were driven, on October 30, as a means of staving off social revolution, to issue a new manifesto giving the country what was to all intents and purposes a constitution. The Duma was to be constructed so as to represent all classes of the people under a democratic form of suffrage; no law was thenceforth to become effective without this body's approval; the ministers were to be formed into a council, with a prime minister at its head, as in Western countries (even though, like the chancellor in Germany, that key official was still to be responsible only to the titular head of the state); a full grant of civil liberty was added—inviolability of person, and freedom of thought, speech, assembly, and organization. A few weeks afterwards, another rescript set up the promised electoral system, giving votes to the great mass of the population, including peasants and urban workers. Thenceforth, the tsar was to share the government of Russia with duly elected representatives of his people.<sup>1</sup>

The political transformation thus auspiciously begun did not work out satisfactorily. Peace with Japan, restored under terms of the treaty of Portsmouth, liberated the government to some extent from the difficulties which had compelled it to make concessions; radical elements that desired revolution at all costs refused to be diverted from their objective; even the more moderate reform forces persisted in dissipating their strength in factional strife, each group bent on the realization of its own particular program. The upshot was that constitutional, parliamentary government was practically strangled at its birth. Even before the first Duma met, a decree of March, 1906, entitled "Fundamental Laws of the Empire," associated with that body a second chamber known as the Council of the Empire, and composed equally of members appointed by the tsar and elected by the nobility, zemstvos, and university faculties. At the same time, the fundamental laws of the Empire, the composition of the legislative bodies, the army and navy, and foreign relations were enumerated as matters which the two houses should not even discuss.<sup>2</sup> When it is observed further that no measure

The outcome

<sup>1</sup> For the texts of these important documents, see W. F. Dodd, *Modern Constitutions*, II, 181-195.

<sup>2</sup> *Ibid.*

could be considered in any case without the government's consent, that the system contained no hint of ministerial responsibility, that the tsar wielded an absolute veto over all legislation, could prorogue or dissolve the Duma at will, and enjoyed unlimited ordinance power when the Duma was not in session, it goes without saying that the new representative assembly was endowed with no great amount of actual authority.

No sooner was the first Duma elected than it appeared that it would be dominated by elements—chiefly the Constitutional Democrats—distinctly hostile to the government;<sup>1</sup> and when, upon assembling in May, 1906, it fell to discussing a bill looking to expropriation of the great estates in the interest of the peasants, and even began talking about steps necessary to launch a cabinet system, it was dissolved and election of another one ordered. The result was, from the view-point of the government, no better; indeed it was worse, for notwithstanding that the elections were freely tampered with, the second Duma was even more liberal than the first. Consequently, after being tolerated for a brief time, it went the way of its predecessor. Then the government concluded that it had made a mistake in sanctioning an electoral system that enabled such things to happen, and before ordering another election arbitrarily changed the scheme, withdrawing representation altogether from some parts of the Empire, shamelessly gerrymandering other parts, and introducing a complicated class system calculated to ensure the return of majorities amenable to control.<sup>2</sup> The expedient worked, and the third Duma, proving more deferential, was permitted to complete its legal term of five years. The fourth, elected in 1912 on similar lines, was in existence when the World War began, and survived until 1917.

The revolution of 1905 was not entirely fruitless. The Duma, to be sure, was no such free and vigorous national assembly as the moderate reformers desired; indeed, the unhappy experience of a decade had, by 1914, pretty well brought these elements to the conviction that true parliamentary government could never be attained in Russia by ordinary constitutional means.

<sup>1</sup> At that, the two avowedly revolutionary parties, Social Democrats and Social Revolutionaries, had boycotted the elections.

<sup>2</sup> S. N. Harper, *The New Electoral Law for the Russian Duma* (Chicago, 1908). The electoral system is described in detail in C. Seymour and D. F. Frary, *How the World Votes*, II, Chaps. xxvi-xxvii.

Even in its later less democratic form, however, the assembly reflected public opinion to some extent, furnished a forum for the discussion of national affairs, and occasionally exerted some influence on the government's policies. Clearly it served to familiarize the country with the idea of representative institutions on a national scale, even though, all in all, the Empire's government was still, in 1914, a thinly veiled autocracy.<sup>1</sup>

Hardly anything less than super-human skill on the part of the monarch and his ministers could have carried the Russian political system of pre-war days through the experiences of 1914-18 intact. But Nicholas II was far from being super-humanly clever, and, with few exceptions, the people who surrounded and influenced him—whether the ministers who passed in dreary succession across the political stage, the members of his immediate household, or the hangers-on at the court—were stupid, reactionary, and corrupt. The result was that under the impact of the war the government tottered and collapsed, forces of revolution burst all restraints, the tsar and his family were brutally murdered, the Red Terror swept the land as fire driven by the wind, society was turned upside down, and the once imposing Empire became only a name. The outbreak of the war was the signal for a demonstration of patriotic feeling almost as unanimous and impressive as the show of public sentiment in France, Germany, and other belligerent countries. All elements except the Bolshevik wing of the Social Democrats pledged the government unqualified support.<sup>2</sup> However, the stupendous losses of men, the German conquest of the Polish and other provinces, and the sufferings of the masses, produced, within the first year, grave discontent; and in August, 1915, all of the groups in the Duma—now fast becoming a body with a will of its own—except the Reactionaries and the Social

Political tension during the World War

<sup>1</sup> On the revolution of 1905 and after, see G. Vernadsky, *A History of Russia*, Chap. xi; P. Milyoukov, *Russia and Its Crisis* (Chicago, 1905); B. Pares, *Russia and Reform* (London, 1907); S. A. Korff, *Autocracy and Revolution in Russia* (New York, 1923); and from a Marxist point of view, M. N. Pokrovsky, *Brief History of Russia*, trans. by D. S. Mirsky (New York, 1933), II. Cf. E. A. Goldenweiser, "The Russian Duma," *Polit. Sci. Quar.*, Sept., 1914. The events of October, 1905, are related graphically by Count Sergius Witte (first prime minister under the new régime) in his *Memoirs*, trans. by A. Yarmolinsky (New York, 1921).

<sup>2</sup> The attitude of the parties, and of the people generally, toward the war is described in G. Alexinsky, *Russia and the Great War*, trans. by B. Miall (New York, 1915).

Democrats drew together in a "progressive bloc" whose purpose was to urge upon the government immediate and drastic reforms. Strong demand was forthwith made for a restoration of democratic suffrage and for a full parliamentary scheme of government. Far from heeding it, however, the embittered tsar allowed himself to be swayed in the direction of extreme reaction, and a breach arose between the government and the reformers which steadily widened as the second year of the war advanced. The winter of 1916-17 brought matters to a crisis. The tsar was completely dominated by the tsarina, who, in turn, was ruled by the charlatan Rasputin; ministers and bureaucrats brazenly bartered with the enemy and lined their pockets with the proceeds of their treachery; gross and willful mismanagement in government circles cost the lives of countless thousands of soldiers and brought untold suffering to other thousands and to the civilian population in all parts of the country; the army at the front, though holding its hard-won positions, was war-weary and distrustful of its leaders; conscripts in the rear were listening eagerly to socialist, defeatist, and revolutionary propaganda; economic insecurity was helping undermine such morale as remained. When, after a protracted recess, the Duma was reassembled in February, 1917, the government met its protests with obvious determination to make no concessions and to stamp out the entire liberal movement. Preservation of autocracy and of the privileges of the bureaucracy seemed to have displaced the winning of the war as the chief concern at court; and despair of any improvement under the existing political régime became general.

The bourgeois revolution of March, 1917

The upshot was revolution. With disorder threatened in the capital at the hands of hungry and discontented soldiers and workmen, and with the imperial government itself showing unmistakable signs of disintegration, a *ukaz* proroguing the Duma was issued on March 11. Far from obeying, the body assembled in one of the palaces and sought to curb, or at least to guide, the forces of rebellion. Representing chiefly the more substantial elements of the population, the Duma leaders by no means relished a proletarian uprising, and every effort was made to induce the government, even at the eleventh hour, to forestall the impending revolution by adopting a liberal and conciliatory policy. But the court reactionaries would not be convinced.

Perhaps disaffection had gone too far to be checked. At all events, when the troops were sent out to disperse the throngs surging through the streets demanding food, they joined the mob instead, and the city was forthwith given over to revolution. The great prison fortress of Saint Peter and Saint Paul was stormed and the prisoners released; ministers and other bureaucrats were arrested and slain or imprisoned; a St. Petersburg soviet,<sup>1</sup> or council, of workers' and soldiers' deputies was set up; from afar, news came that the armies in the field had declared for an end of the old régime. Still hoping to guide the revolution along reasonably moderate lines, the Duma laid claim to full power, appointed a provisional government with Prince George Lvov, a Constitutional Democrat, as chairman, and procured, on March 15, the abdication of the now frightened and despondent Nicholas II. When forsaking his throne, the tsar designated his brother, the Grand Duke Michael Alexandrovich, as his successor and Prince Lvov as head of the ministry. The latter arrangement gave some show of legality to the new order. But as for the Grand Duke, he refused to accept so dubious a succession; and the rule of the Romanovs in Russia—at the last so weak that it fell almost without being pushed—was ended.<sup>2</sup>

The new government promptly won the recognition of the United States and of the Entente Powers. Furthermore, it commended itself to liberals throughout the world by the manifest sincerity with which it proclaimed democratic principles and asserted the rights of the people, especially the subject nationali-

The provisional government and its difficulties

<sup>1</sup> The idea of the "soviet" seems to have originated in England, where a follower of Robert Owen in the early nineteenth century (though without that leader's approval) propounded a plan for dispensing with the House of Commons and organizing a government based on councils representing the various trades. It reappeared in France in 1848, when the short-lived Luxembourg Commission was organized from delegates elected by trades from the various workshops to represent the Paris proletariat. Its first appearance in Russia was in 1905, when a strike committee—the first real soviet—was set up in St. Petersburg to carry on the general strike which forced the granting of the October manifesto. Disappearing as soon as the reaction set in, the institution is not heard of again until 1917. As may be gathered from the facts cited, the distinctive feature of a "soviet" is not the political views of its members, but the fact that they are chosen to represent functional, or occupational, groups. There is thus no necessary connection between "soviet" and "bolshevist."

<sup>2</sup> Nicholas II and the members of his family, after being held as prisoners at various places, were executed at the Ural town of Ekaterinburg on July 18, 1918.

ties. The political regeneration of Russia was, however, too vast an undertaking to be carried out so quickly and so easily. The collapse of the old order inevitably became the signal for particularistic manifestations, long repressed, against the unity of the polyglot nation; inexperienced in self-government on a large scale, the people were sure to stagger under the suddenly imposed responsibilities of the new régime; the habit of hating the tsarist government had bred a distrust of, and impatience with, government in general. The result was that the Lvov provisional government ran at once into insurmountable difficulties. These cannot be described here; but the fundamental trouble lay in the fact that whereas the new government was a bourgeois government which proposed to reorganize Russia on a constitutional basis after the fashion of Western states, the elements among the people at large which were most articulate cared little about that sort of thing and looked rather to some form of loose economico-political organization which would bring power mainly or entirely into the hands of the working classes. From the outset, the provisional government, representing the political revolution, was meagerly supported outside of the capital, while extra-legal soviets of workmen's, soldiers', and peasants' deputies—organized throughout the country on the model of the revived St. Petersburg soviet of March, 1917, and representing the social revolution—drew the interest and support of the masses. These soviets were dominated by Socialist Revolutionaries and Social Democrats (not yet by Bolsheviks); they fully understood that the Lvov government aimed at middle-class rule; they were prepared to be satisfied with nothing less than economic and social reconstruction at the hands of a government dominated by a peasant and worker democracy; and their activities not only demoralized the armies in the field but at all stages paralyzed the arm of the provisional government.

As weeks passed, the breach between the provisional government and the elements represented in the soviets widened steadily, and in the early summer it became necessary, in order to hold things together at all, to open the ministry to five members representing the Petrograd soviet.<sup>1</sup> This intensified in-

<sup>1</sup> It is to be observed, however, that Alexander Kerensky, although nominally a member of the executive committee of the soviet, was a leading member of the

ternal differences from which the government already suffered and left it even more irresolute than before. The soviets steadily grew more outspoken in their opposition to the prolongation of the war; propaganda of a dozen sorts—pacifist, pro-German, nationalist—produced appalling discord and unrest. With the country fast slipping into anarchy, the situation was ripe for the rise to power of any party or group of men which could put itself dynamically behind a definite program and organize popular feeling in its behalf. Such a party promptly appeared in the form of the ultra-radical Bolsheviks.<sup>1</sup>

Russian Socialists in the earlier twentieth century fell into two main schools, or parties, the Social Revolutionaries and the Social Democrats. The former, recognizing that the country was, and must long remain, agricultural, was interested principally in rousing the illiterate and apathetic peasantry, comprising nearly four-fifths of the entire population, to revolt with a view to gaining individual proprietorship of land still owned for the most part by the state or the nobility or held in common by the villages, or *mir*s.<sup>2</sup> There was no party of quite the same nature in Western Europe, for no Western country presented a situation of quite the same kind. The Social Democrats, on the other hand, concerned themselves primarily with the urbanized industrial workers, whom they considered the shock troops of the coming revolution. Drawing their inspiration principally from Marx, they had more in common with Socialist parties elsewhere. Both parties were split into moderate and radical factions, each of which tended at times to merge with the corresponding faction of the other party. The moderate and radical wings of the Socialist Revolutionaries were as a rule referred to as the Right and the Left. The Social Democrats were even more provisional government from the beginning. From July, he was its official head, in succession to Lvov.

Bolsheviks  
and Men-  
sheviks

<sup>1</sup> The revolution of March, 1917, and the failure of the provisional government are dealt with in G. Vernadsky, *A History of Russia*, Chap. xiv; E. Vandervelde, *Three Aspects of the Russian Revolution* (New York, 1919); A. J. Sack, *The Birth of Russian Democracy* (New York, 1919); and many other books. A valuable first-hand account of certain phases by a leading actor in the drama is A. F. Kerensky, *The Prelude to Bolshevism* (New York, 1919).

<sup>2</sup> For excellent accounts of the agrarian situation, see G. T. Robinson, *Rural Russia under the Old Régime* (New York, 1932), and G. Pavlosky, *Agricultural Russia on the Eve of the Revolution* (London, 1930). A briefer analysis is V. M. Dean, "Russia's Agrarian Problem," *Foreign Policy Association Information Service*, Vol. VI, No. 10, July 23, 1930.



sharply divided into the Bolsheviks ("Majority") and Mensheviks ("Minority"). Starting at the second congress of the party, held at London in 1903, this breach was at first a matter chiefly of leadership and discipline, but in time it became a fundamental difference of principle and policy. Like the orthodox, evolutionary Socialists of Germany and France, the Mensheviks believed that the socialist state was to be attained gradually and by peaceful means, and were willing in the meantime to cooperate with other liberal, but non-socialist, elements. Like Western Communists and other extremists, the Bolsheviks scorned slow, peaceful, political methods; indeed, long before 1917 they had advanced to the point where they would be satisfied with nothing short of a cataclysmic, world-wide overthrow of the capitalistic order, to be followed by a dictatorship of the proletariat. All of the parties and factions as yet drew their leadership, and in truth much of their membership, not from the workers themselves, but from the intelligentsia of middle-class, or even noble, origin. Prominent among the Social Revolutionaries were the editor Victor Tshernov and the indomitable Catherine Breshkovskaya.<sup>1</sup> Leading Mensheviks included George Plekhanov and Lev D. Bronstein, the latter a Jew who, as Leon Trotsky, later became the tactician of the Bolshevik revolution. Chief among the Bolsheviks was Vladimir Ilyitch Ulyanov, son of a government inspector of schools who had received a patent of nobility from the government, and destined to fame under the pseudonym of Lenin.<sup>2</sup>

The Bolshevik revolution of 1917

Although constituting a majority in the London congress where the name was acquired, the Bolsheviks originally formed only a small minority of the Russian Socialists generally, and not only did they totally fail to realize their purposes in 1905, but even in 1917 they formed no very important element in the soviets as first organized. They, however, were unencumbered by any relations with or responsibility for the provisional gov-

<sup>1</sup> See K. Breshkovskaya, *Hidden Springs of the Russian Revolution* (Stanford University, 1931).

<sup>2</sup> Having been arrested and deported to Siberia at the age of 26 because of his radical political activities, Lenin settled in Switzerland in 1900, remaining there (except for a brief visit to his home country during the revolution of 1905) until 1917. His paper, *Iskra* ("The Spark"), published at Zurich, became the Bolshevik party organ. Cf. Leon Trotsky, *Lenin* (New York, 1925); *ibid.*, *My Life* (New York, 1930); G. Vernadsky, *Lenin, Red Dictator* (New Haven, 1931).

ernment;<sup>1</sup> they were blessed with able and not too scrupulous leaders; and they had a program which, although incongruously aimed at forcing a Marxist system devised in terms of an industrial society upon a decidedly rural and agricultural people, nevertheless could be counted upon to prove attractive to an uneducated, impressionable, war-weary people who wanted, not constitutionalism and democracy (of which they knew little), but land, bread, and peace. The main points in this program were: an immediate armistice, to be followed by peace negotiated by representatives of the proletariat; confiscation of all landed estates and parcelling of the soil among the peasants, who were everywhere to be organized in soviets; full and immediate management of all factories and mines by the workers, organized similarly; nationalization of all production and distribution; repudiation of the tsarist national debt; and organization, on the basis of the urban and rural soviets, of a government controlled exclusively by the masses. A dictatorship of the proletariat was the objective; "all power to the soviets," the slogan.

Notwithstanding that as late as June, 1917, when the first All-Russian Soviet Congress was convoked, the Bolsheviki contributed hardly more than a sixth of the delegates,<sup>2</sup> clever propaganda brought the party by the end of the summer into control of most of the soviets; and the growing futility of the provisional government's efforts, rendered the more hopeless by the practical breakdown of the armies on the Western front, foreshadowed both the collapse of Russia in arms and a complete transfer of power to the Bolshevik-controlled councils. An attempt to seize the reins in July failed, and the provisional government, thenceforth under Kerensky's leadership, labored on to keep the military and political situation in hand. But every plan of rehabilitation failed, and as weeks passed it became clearer that both army and government were simply going to pieces. Elections to a second All-Russian Congress of Soviets, to be convened at Petrograd on November 7, gave the Bolsheviki a heavy majority; and the meeting of this assembly was made the occasion of the now inevitable *coup*. On the night of November 6, carefully rehearsed Bolshevik soldiery—precursors

<sup>1</sup> Many Mensheviki served as ministers in this government.

<sup>2</sup> The rest were Social Revolutionaries and Mensheviki, in almost equal numbers.

of the famous Red Guards—occupied the Winter Palace and other government buildings; the local garrisons remained inactive or went over to the revolution; on the morning of the 7th, the members of the provisional government—Kerensky alone escaping—were placed under arrest; and on the next day, the Congress of Soviets “regularized” what had been done by formally proclaiming the Russian Socialist Federal Soviet Republic and voting all political power to a Council of People’s Commissars, appointed mainly from the ranks of the Bolshevik Central Committee, with Lenin as premier and Trotsky as “people’s commissar for foreign affairs.” A “decree of peace” forthwith indicated that so far as Russia was concerned, the World War was over;<sup>1</sup> a “decree of land” abolished private ownership of the soil, which henceforth, as property of the state, was to be shared by all agricultural workers; a “decree of industry” proclaimed the control of workers’ committees over industrial plants.

Consolidat-  
ing the new  
régime

The most reactionary government in Europe had by stages, yet in the space of less than eight months, given way to the most radical. But could the new régime, at first localized entirely in the capital, and personalized in a little group of commissars sitting on kitchen chairs around a pine table in a former girls’ boarding school, actually establish itself and endure? Most people, even in Russia, thought not; even after months and years had passed, the world still expected to hear almost any day that the end had come. It was the old story, however, of a compact, highly organized, and ably led minority having its way at the expense of a huge but amorphous and inarticulate majority. Not that the victory was won in a week, or a year. Even by the summer of 1918, when control had been extended not only to the towns but also to the rural districts, the new order had but begun its real fight for existence—a fight of exceptional severity through the next three years, not only against counter-revolution (involving civil war on many fronts) and

<sup>1</sup> With untold numbers of soldiers forsaking their posts on the Western and Caucasian fronts and streaming back to their native villages, Trotsky opened peace negotiations with Germany late in December. In the humiliating treaty of Brest-Litovsk, signed on March 3, 1918, Russia indeed obtained peace, but also agreed to pay a heavy indemnity and acknowledged the independence of Poland, Finland, Lithuania, Estonia, and even of the Ukrainian Republic which a short while previously had elected to go its own way.

foreign intervention,<sup>1</sup> but against passive resistance, sabotage, famine, and other less spectacular but equally weighty obstacles. With "strike quickly, strike hard, strike secretly" as its principle of action, Lenin's new engine of power, however, though an Ishmael among the governments of the world, so far swept resistance before it as both to paralyze its foes and confound those who prophesied its destruction. "We have shown," said Trotsky to the Petrograd soviet, "that we can take the power. We must show that we are able to keep it. I summon you to a ruthless fight." Of ruthlessness, there was indeed no lack. The Red Terror, betokening, as it seemed to startled Westerners, almost a relapse into Mongol savagery, was loosed upon the country, and nobles, landowners, tsarist officials, and unsympathetic intelligentsia were imprisoned, executed, or exiled by the thousands.<sup>2</sup> There was ruthlessness, too, toward institutions no less than toward persons. Land, banks, and industries were nationalized; the church was repudiated and its property turned to secular uses; the educational system was made over; and when, in January, 1918, a national constituent assembly, elected under democratic arrangements devised by Kerensky's government (and significantly containing not over 40 Bolsheviks out of a total of 703 members), met in Petrograd and began passing resolutions hostile to the new order, it was summarily dissolved and the dictatorship of the proletariat triumphantly reasserted.

To maintain itself in power was naturally the first concern of the little group that found itself on top. But beyond that was the huge task of rebuilding a backward and demoralized nation on totally untried lines. In this, of course, lay the real revolution; and for upwards of two decades the work has proceeded, with many a stop and start and many a compromise, yet with (for better or worse) a surprising amount of actual achievement, especially when one considers the enormous areas and populations to be reached, the magnitude of the transformations under-

<sup>1</sup> G. Stewart, *The White Armies of Russia; A Chronicle of Counter-Revolution and Allied Intervention* (New York, 1933). Anti-Bolshevik elements, in contradistinction to the "Reds," came to be known as the "Whites."

<sup>2</sup> The principal agency of the Terror was the *Cheka* (so named from the initials of the Russian words for "extraordinary commission"), a special police establishment organized in December, 1917, to deal with counter-revolutionary tendencies and manifestations. See p. 882 below. In fairness, it should be added that the counter-revolutionists were hardly milder in their methods.

taken, the hostility encountered both at home and abroad, and the brevity of the period during which the great experiment has been under way. The ultimate outcome remains to be disclosed. But whatever it may be, the world will have much to learn from the spectacle that has been presented. With but incidental attention to the remarkable communistic economic and social order that has been ushered in, we turn to view the nature and workings of a plan of government for which history affords no parallel.<sup>1</sup>

<sup>1</sup> The fortunes of Russian national government throughout the war period are traced authoritatively in P. Gronsby and N. J. Astrov, *The War and the Russian Government* (New Haven, 1929), 1-127. The collapse of the provisional government of 1917 and the launching of the Bolshevik régime are outlined clearly in G. Vernadsky, *A History of Russia*, Chaps. xv-xvi. Fuller accounts will be found in J. Mavor, *The Russian Revolution* (New York, 1928), and G. Vernadsky, *The Russian Revolution, 1917-1931* (New York, 1932). Important books by Russian participants include A. Kerensky, *The Catastrophe* (New York, 1927); L. Trotsky, *History of the Russian Revolution*, 3 vols. (London, 1932-33); and V. I. Lenin, *Collected Works*, XX, "The Revolution of 1917" (speeches and writings of that year), also in two vol. ed., *The Revolution of 1917* (New York, 1932). The technique of the revolution in its initial stages is described interestingly in C. Malaparte, *Coup d'État*, trans. by S. Saunders (New York, 1932), Chaps. i-ii, and the political and economic thought underlying it, in F. W. Coker, *Recent Political Thought*, Chap. vi, and H. J. Laski, *Communism* (New York, 1927). American readers will find of special interest a storehouse of information contained in *Papers Relating to the Foreign Relations of the United States: Russia*, 3 vols. (Washington, Government Printing Office, 1931).

## CHAPTER XXXIX

### GOVERNMENT AND POLITICS OF THE U.S.S.R.

There are countries—many of them—in which the operations of government are slowed up or otherwise obstructed by the existence of an undesirable number of political parties and groups. France, Czechoslovakia, and the Balkan states afford familiar illustrations. Four widely separated countries, however, present a situation of quite a different sort. Italy has only one party, the Fascist; Germany has now only one legally recognized party, the National Socialist; China (at all events that portion of it which recognizes the national government at Nanking) has but a single party, *i.e.*, the Kuomintang; Russia has but one, the Bolshevik, or as now officially termed, the Communist. In each of these instances, no rival party is recognized or permitted to enter the political arena; in all four, the one existing party not only monopolizes political power and runs the government singlehandedly, but is so inextricably interlocked with the government in mechanism and personnel that the observer is baffled to know where party leaves off and government begins. Since government in the Union of Socialist Soviet Republics has been for nearly a score of years—and is today, in form, method, and spirit—whatever the Communist party has chosen to make it, one who wishes to look into its characteristics will do well to start by considering what the Communist party is and how it works.

One-party  
government

Like most organizations of the kind, the Communist party is both a creed and a mechanism. It is a creed in the sense that it cherishes an elaborate body of economic and political doctrine to which all of its members must unswervingly adhere. It is a mechanism in the sense that it is geared in all of its parts to highly centralized control by a single compact group driving steadily toward an unchanging goal. The party's principles are derived more largely from the teachings of Karl Marx than from any other single source. Like Marx, the party sharply indicts the whole structure and theory of modern capitalistic

Communist  
doctrine

society. As long as there are men who live mainly by labor and others who live mainly by investment and directing the labor of others, hostility between the two groups is inevitable and class war must continue to be the mode or means of all social evolution. In all of its typical contemporary forms, the state is an organization for upholding the institution of private property, an instrumentality for perpetuating the domination of the owners of wealth over the propertyless, an agency for preserving the economic and social status quo. Democracy, as operating in countries like Great Britain and France, is not popular rule, but bourgeois rule. Social justice therefore requires that the state and the instrumentalities of government as known to the capitalistic world be overthrown; and while Marx had the idea that this could come about only after capitalism had wrought its own destruction in a highly industrialized society, Lenin and his followers boldly planned—in a country which according to the Marxian hypothesis was least prepared of any for a socialist revolution—to take a short cut and proceed to the revolution forthwith. The final overthrow of capitalism and of bourgeois government must come by deliberate action of the workers themselves, by violent means, and through capturing control of the state.

It is part of the theory that, under proletarian dominance, the state will diminish in importance, gradually withering away as the workers for the first time gain true freedom in a non-capitalistic, classless, coöperative society. But for the time being the proletariat, having seized the state by violence and turned its weapons against those whom it formerly served, must reconstruct and run it as a means of finally crushing all forces that still would block the permanent realization of a collectivist society based on proletarian dictatorship. Once in power, Communism must address itself to doing away with private property, and otherwise putting the new régime in order. Also it must throw its energies, through propaganda and agitation, into promoting world revolution, since it is hardly probable that a communist state could sustain itself indefinitely in a world remaining predominantly capitalist. The grand objective should be an international community of proletarian states, leading in time to a single state controlled by the workers of all lands, with racial and national boundaries forever obliterated. The road to be travelled, even in Russia alone, would be, as Lenin conceded,

long and difficult. But while tactics might be changed to meet differing conditions, the direction of march should never be shifted; and none but Communists should share in marking it out.<sup>1</sup>

Like the Italian Fascist leaders, the architects of the new Communist régime in Russia were not slow to realize the necessity of an inner group within the state which should be large enough to be powerful and imposing, but not so large as to be unwieldy. Such an organization is the Communist party. Starting after the revolution with very small numbers, this party has grown, despite repeated purging of its rolls, to something like 2,500,000 adherents.<sup>2</sup> This may not seem an impressive record. But it is to be observed that while parties ordinarily measure their power and importance largely in terms of numbers, the Russian Communist party, like the Fascist party in Italy, is intentionally kept reasonably small in order to be the more manageable, and to have the better morale. It is, indeed, not a party at all in the English or American sense, but rather a "carefully selected and deliberately limited companionship of more or less exceptional persons" chosen out of a great mass of people which otherwise remains politically unorganized. Not all people living in Russia—not even all who call themselves Communists—are eligible for membership; for the constitution of the party, as adopted by the Fourteenth Congress in 1925,<sup>3</sup> provides that workers and soldiers drawn from peasant and workers classes are to be preferred members, and must in all cases constitute an absolute majority of the total. Eligible persons may apply by securing recommendations from two party members, temporary admission being followed by a six-month probation before the candidate is finally received into the ranks.

Composition  
of the Com-  
munist party

<sup>1</sup> For discussions of the theory of Communism, see V. I. Lenin, *The State and Revolution* (Detroit, 1917); J. Stalin, *Leninism*, trans. by E. and C. Paul (New York, 1928); H. J. Laski, *Communism* (New York, 1927); R. W. Postgate, *The Bolshevik Theory* (New York, 1920); E. Colton, *The X Y Z of Communism* (New York, 1931); and T. B. Brameld, *A Philosophic Approach to Communism* (Chicago, 1933). Cf. brief expositions in F. W. Coker, *Recent Political Thought*, Chap. vi, and G. D. H. and M. Cole, *The Intelligent Man's Review of Europe Today*, 459-479. The relations of Russian Communism to the thought of Marx are dealt with in M. Hillquit, *From Marx to Lenin* (New York, 1921).

<sup>2</sup> Not including some 500,000 probationers. The name "Communist party," adopted officially in February, 1918, was in 1923 changed to "All-Union Communist party." There are no separate parties in the several federated republics.

<sup>3</sup> For text, see *Curr. Hist.*, February, 1927, pp. 714-721.



Other types of people who may apply include peasants, handicraftsmen, and office employees, but the requirements for these are distinctly more rigid; additional signatures are necessary, and longer periods of probation, *e.g.*, two years for office employees. Merchants, traders, priests, employers of labor, and similar groups are not eligible. In 1930, almost seven-tenths of the membership consisted of industrial workers, the remainder being mainly peasants, civil servants, and intellectuals; and one-seventh of the total were women.

Obligations  
of party  
membership

Once the period of probation is passed, the newly admitted member of the party finds himself subject to a system of exceedingly strict controls. He takes no vows, has no special uniform, wears no badge, and uses no secret sign or password. But he is fully registered, both locally and at Moscow; and his membership card carries with it definite obligations calculated to frighten off all save those of genuine belief and zeal. He may not hire labor if likely to result in profits of any kind; he may not engage in trade; he may not receive more than a fixed (and modest) maximum salary, out of which he not only must pay his party dues, but keep them, upon threat of expulsion, from falling into arrears; he must publicly profess atheism; he must be prepared to execute to the utmost of his ability every order and command given him, an obligation to which there are absolutely no exceptions; in a word, although vehemently disclaiming any association with religion, he must subject himself to a régime of discipline, self-denial, and service reminiscent of nothing so much as that enforced by a mediaeval religious order. If he proves lax in fulfilling any of these requirements, or if he is found guilty of other misdemeanors, such as drunkenness, immorality, tax evasion, non-payment of dues—or attending church services!—he incurs penalties ranging in severity from reprimand or demotion to expulsion from the party. Keenly alive to the dangers flowing from disaffection within the ranks, the leaders have from time to time combed over the lists and dropped large numbers; in the period from January 1, 1928, to April 1, 1930, alone, more than 170,000 persons are said to have been ejected.<sup>1</sup> These housecleanings are the special function of a central control commission of some 200 members, elected by the party congress for the express purpose of “assisting the party in consolidating

<sup>1</sup> B. C. Hopper, *Pan-Sovietism* (New York, 1931), 82.

the unity and authority of the All-Union Communist party, recruiting the best part of the labor class for the party, and resisting violations of the Communist program and constitution by members. . . .” The work of the commission at Moscow is expedited by assistance rendered by similar commissions attached to regional and local party organs.

The structure of the Communist party, like that of the Italian Fascist party, is avowedly based on the principle of “democratic centralization.” At the bottom is the “cell,” *i.e.*, the organization, for propagandist purposes, of all Communists in a particular factory, mine, university, army regiment, or, in rural communities, in a single village or locality. These units—some 40,000 in number, with a minimum membership of three, and with usually one or more paid officials—are subordinated to committees, on progressively higher levels, in district, county, province, and republic. On paper, at least, the supreme organ is the All-Union Congress, meeting usually about every two years. Theoretically, this Congress ratifies the acts of the permanent central party agencies, revises the program and statutes of the party, and determines the tactical lines to be followed in respect to current questions and problems. Actually, the Congress being too large for effective action, party control is located in the “permanent” organs, chiefly the Central Committee, a body of 71 members elected by the Congress for the purpose of establishing and supervising the operation of various other agencies, especially (1) the *Orgbureau*, or Organization Bureau, which has to do with matters of membership and propaganda, (2) the *Polibureau*, or Political Bureau, which determines the general policies of the party, and (3) the Secretariat, which is responsible for “the current work of organization and execution.” It is in these last-named agencies that centralized power, in respect not only to the party, but to the U.S.S.R. as well, is really to be found. The handful of men who control Russia’s destinies do so far more through their party positions than through the tenure of official governmental posts. The principal position held by Stalin himself, for example, is only that of secretary-general of the Central Committee; but this, along with his membership in the Organization Bureau and Political Bureau, is sufficient to make him virtual dictator of the Soviet Union.<sup>1</sup>

Party organization

<sup>1</sup> Lenin was chairman of the Political Bureau until his death in 1924. The most

Making  
young  
Communists

The founders of the Communist régime were well aware that the ultimate success of their grandiose experiment would not unlikely depend upon the extent to which they succeeded in indoctrinating with their views a younger generation which had known nothing of the struggles against tsardom. Upon boys and girls of even tender ages must be imposed a "proletarian morality," precisely as in Western countries the ruling elements impose a "bourgeois morality." Like the Italian Fascists, the founders therefore made special provision for the political instruction of youth. Three separate but related organizations are employed: the *Komsomol*, or Union of Communist Youth, the Pioneers, and the Little Octobrists,<sup>1</sup> the first designed for young people (of both sexes) between 16 and 23 years of age, the second for children from 10 to 16, and the third for beginners from 8 to 10. In principle, the child advances, step by step, until in due time he passes from the Union of Youth into the Communist party. It would be an error, however, to assume that such advancement is automatic. The day is indeed anticipated when the party will be composed only of people who have come up through the ranks of the Union. But the leaders do not guarantee or intend that Union members shall in all cases finally be admitted. Their idea is rather that while a grounding in Communist principles shall be given widely, actual party members shall be recruited but sparingly from certain classes, especially the peasants. The numbers enrolled in the Union and the Pioneers are at present some 5,000,000 and 6,000,000 respectively. While existing principally to receive instruction, the organizations are occasionally employed in appropriate incidental ways, *e.g.*, the Union as an agency for rounding up the homeless and incorrigible youth running wild in the streets of Moscow.<sup>2</sup>

Much of the Communist propaganda in foreign countries is

convenient brief description of the party is V. M. Dean, "The Political Structure of the Soviet State: The Communist Party," *Foreign Policy Reports*, Vol. VIII, No. 1, Mar. 16, 1932. Cf. R. L. Buell *et al.*, *op. cit.*, 344-355.

<sup>1</sup> According to the old-style Russian calendar, the Bolshevik revolution occurred in October, 1917, not November.

<sup>2</sup> S. N. Harper, *Civic Training in Soviet Russia* (Chicago, 1929), and *Making Bolsheviks* (Chicago, 1931). Cf. S. Nearing, *Education in Soviet Russia* (New York, 1926); A. P. Pinkevitch, *The New Education in the Soviet Republic* (New York, 1929); Sidney Webb, "The Steel Frame of Soviet Society," *Polit. Quar.*, Jan.-Mar., 1933, and *Yale Rev.*, Winter, 1933.

carried on through a mechanism known as the *Komintern*, or Third International. Despite repeated avowals of Russian officials that the International as a working union of Communist forces throughout the world is an entirely distinct organization which has merely been given asylum on Russian soil, there is unmistakably a close personal, even though not an institutional, union not only between the Communist party and the Komintern but between the latter and the Soviet government itself. To be sure, persons high in power in the Soviet state have not as a rule participated actively in the work of the International. To be sure, too, these persons have of late, for practical reasons, inclined to considerably better working relations with the capitalistic world than Komintern approves. Leading party officials, however, including Stalin himself, have in various instances held important Komintern posts; and since all government officials must be Communists, they can by no means be oblivious to the decisions which the International reaches. In point of fact, these decisions are generally Russian-made, in the sense that while a combination of foreign delegates might conceivably control in the International's counsels, the importance of the U.S.S.R. as the spear-head of Communism gives Russian influence a steady preponderance.<sup>1</sup>

The Communist party and the Third International

After ejecting the more moderate Mensheviks from all share in the control of affairs, the Bolshevik leaders, in the spring of 1918, turned their attention to the very bourgeois business of making a national constitution. A commission set up by the central executive committee of the party, with Bukharin, Stalin, and other leaders as members, worked out a draft; the Fifth All-Russian Congress of Soviets, meeting at Moscow,<sup>2</sup> approved it; and in July the document was published as the fundamental law of the Russian Socialist Federated Soviet Republic.<sup>3</sup> Based on an extensive series of declarations, rules, and decrees issued

The national constitution of 1918

<sup>1</sup> On the Third International, see W. H. Chamberlin, *Soviet Russia; A Living Record and a History*, Chap. xi. One may also consult W. R. Batsell, *Soviet Rule in Russia* (New York, 1929), containing abundant documents. Earlier documents will be found, too, in "The Communist Party and Its Relations to the Third International and to the Russian Soviets," *Internat. Conciliation*, Nos. 158-159, Jan., Feb., 1921.

<sup>2</sup> The capital was moved thither from Petrograd in February, and the Fourth All-Russian Congress was held there in March.

<sup>3</sup> For text, see H. L. McBain and L. Rogers, *New Constitutions of Europe*, 385-400; W. R. Batsell, *op. cit.*, 80-95.

by the revolutionary authorities between the *coup* of November, 1917, and the early summer of 1918—though also introducing some new elements—the instrument presented many challenging features. Principles of civil equality and personal freedom as enunciated in Western constitutions were replaced by those of sharp class distinction and dictatorship of the proletariat. All individuals and all sections of the country were cut off from whatsoever rights and privileges might be used to the detriment of the revolution. Private ownership of land was abolished, the church disestablished, education secularized, and every policy and feature of economic life placed under exclusive control of the state. On these bases was erected the machinery of a socialist, soviet republic, composed of autonomous units created along ethnographic and national lines, and associated together in a federal scheme which assigned to the central authorities full control over “all questions of national importance.”

Rise of the  
Union of So-  
cialist Soviet  
Republics

Early Bolshevik policy toward the non-Russian peoples who had lived under the rule of the tsar was notably generous. As Bukharin put it in 1918, “The Russian workman, who has the power, says to workmen of other peoples living in Russia: ‘Comrades, if you do not care to become members of our Soviet Republic, if you desire to form your own Soviet Republic, do so. We give you the full right to do so. We do not wish to hold you by force a single minute.’”<sup>1</sup> Such a policy grew naturally out of the absorption of the Bolsheviks in the task of destroying the old régime down to its last vestiges. It sprang also from the thought that the example of regional autonomy thus furnished might lead to revolutionary disturbances in other countries. The latter hope, however, flickered out, and the Bolshevik leaders were presently confronted with the sobering fact that the doctrine of free self-determination was of more utility as a weapon of opposition than as a policy for those in control of a government. Precarious enough at best, Bolshevik power could be maintained only by an unyielding centralization of control; and by one method or another, such centralization was gradually realized in the areas directly under Moscow’s domination. But a problem was presented by other portions of the former Empire, which, freed by the joint effects of the revolution and the treaty

<sup>1</sup> From a brochure entitled “Program of Communists,” cited in *Internat. Conciliation*, April, 1920, pp. 172-173.

of Brest-Litovsk, began setting up independent governments, modelled in most instances on the new Russian pattern. New states, soviet in structure and more or less Communist in principles, sprang up in White Russia, the Ukraine, Trans-Caucasia, Khorezem, Bukhara, and Eastern Siberia. As the menace of intervention and counter-revolution subsided, the Communist leaders, fortified by their military successes, began to consider the advisability of strengthening their position through a formal political union with these states, the destinies of which were, through party channels, already to some extent under their guidance. By 1920, a definite policy of coördination, if not of undisguised control, was fast replacing the earlier ideology of the revolution; and, a treaty of union between Russia proper, the Ukraine, White Russia, and Trans-Caucasia having been signed on December 30, 1922, a new constitution for the Union of Socialist Soviet Republics, prepared by an All-Union commission, was ready to be put into operation in the summer of 1923.<sup>1</sup>

Within the union thus consummated there are now seven constituent republics covering a contiguous area of 8,241,921 square miles, or almost one-sixth of the land surface of the globe. The total population—reported in 1926 at 146,637,530 and estimated in December, 1933, at 170,000,000—is likewise impressive, even though the vast stretches of Siberian waste serve to reduce its average density to only 20.6 per square mile. According to the census of 1926, no fewer than 185 distinct nationalities, speaking 147 languages, are represented: Russians (53.05 per cent of the whole), Ukrainians (21.2 per cent), White Russians (3.23 per cent), Finns, Jews, Uzbeks, Turcomans, Tartars, Circassians, Greeks, Armenians, Georgians, along with dozens of lesser groups such as Poles, Germans, Lithuanians, Rumanians, Kirghisians, Kalmuks, Buriats, Yakuts, and Bashkirs.<sup>2</sup> Altogether, the picture is one of amazing di-

The republics  
of the  
U.S.S.R.

<sup>1</sup> For text, see W. R. Batsell, *op. cit.*, 304-320. The movement leading up to the formation of the Union is described in A. L. P. Dennis, "Soviet Russia and Federated Russia," *Polit. Sci. Quar.*, Dec., 1923. Cf. R. Broda, "The Revival of Nationalities in the Soviet Union," *Amer. Jour. of Sociol.*, July, 1931, and H. Kohn, *Nationalism in the Soviet Union* (London, 1933).

<sup>2</sup> Many of these population elements are only parts of nationalities of which the larger parts live beyond the borders of the Soviet Union. Five of the nationalities alone account for more than 84 per cent of the total, and many number less than 100,000 people. For statistics, see H. Kohn, *op. cit.*, 156-159.

versity in physical characteristics, in language and religion, in stages of cultural advancement. Among the constituent republics, Russia proper, or as the Communists call it, the Russian Socialist Federal Soviet Republic (R.S.F.S.R.), occupies a strongly preponderating position, dwarfing all others with its 7,626,717 square miles of territory and a population (in 1926) of approximately 111,000,000. Next in size stands the Ukrainian S.S.R., with 31,403,200 persons concentrated in its relatively small area of 174,200 square miles. The White Russian S.S.R., lying directly north of the Ukraine and along the Polish border, is smallest of all in area, but ranks fourth in population. Across the mountains in Asia Minor lies the Trans-Caucasian S.F.S.R., itself federally organized and including not only the republics of Georgia, Armenia, and Azerbaijan, but also the small Daghestan republic. Located in southern Turkestan, directly north of Persia and Afghanistan, the remaining three republics, admitted to the Union at later dates—the Uzbek S.S.R., the Turcoman S.S.R., and the Tadzhik S.S.R., with an aggregate population falling a little short of 7,000,000—are of comparatively slight importance.

Within these various areas, constitutional provision has been made for what are termed “autonomous republics” and “autonomous regions.” The constitution of Russia proper, for example, specifically recognizes “the right of individual nationalities to separate, upon decision of their congresses of soviets and upon approval of the supreme organs of the R.S.F.S.R., into autonomous socialist soviet republics and regions.” At present, there are, in all, 15 such autonomous republics and 18 autonomous regions, of which 11 and 15, respectively, are within the R.S.F.S.R. In practice, the terms “autonomous region” and “autonomous republic” do not seem to mean a great deal, autonomy being in both cases largely confined to a limited freedom in certain matters of language and culture.

Each of the constituent republics retains a constitution of its own, that of Russia proper being the now extensively amended instrument of 1918. Each, furthermore (at least on paper), retains its former sovereignty, subject only to the delegation of various powers to the Union authorities. “Beyond these limits,” the Union constitution affirms, “each Union republic exercises its sovereign authority independently. The U.S.S.R. protects the

Their position in the constitutional system

sovereign rights of the Union republics.”<sup>1</sup> These affirmations seem to be fortified by the succeeding sentence, which reads: “Each Union republic retains the right of free withdrawal from the Union.” Pushing farther through the document, however, one discovers that not only withdrawal from the Union, but even changing the boundaries of any constituent republic, requires the consent of every member of the federation. It is further significant that amendments to the Union constitution can be adopted by the Congress of Soviets of the U.S.S.R. singlehandedly, without securing the approval of individual republics. And finally one observes that, even apart from the powerful central controls exercised through the channels of the Communist party, a high degree of centralization is attained through delegation to the Union government of exclusive jurisdiction over most of the major fields of public activity, including foreign affairs, war and navy, foreign trade, transportation, waterways, agriculture, and posts and telegraphs. In these domains, administration is assigned completely to what are termed All-Union commissariats. But there are also “unified commissariats” (in such spheres as heavy and light industry, lumber, labor, finance, workmen’s and peasants’ inspection, and statistics), which, while having separate administrative organizations in each republic, are likewise under the supervision and control of a central commissariat at Moscow. Health, justice, and social welfare are virtually the only administrative functions which are even theoretically left exclusively to the separate republics. From the broad fact that the central authorities have full control over all economic life and activity, vast powers of regulation by the simple method of issuing decrees, and virtually unlimited power to suspend or repeal the acts of the congresses or central committees of the various republics, it may safely be concluded that, in spite of the constitution’s seeming acceptance of the principle of state sovereignty, centralization of control in the U.S.S.R. is possibly equalled, but certainly not exceeded, anywhere in the world. The term “federal” is frequently heard in discussions of the system, but—if used in any exact sense—quite without justification.

Guided by their unshakable notion that Western political institutions have been developed to serve a capitalistic society

<sup>1</sup> Chap. II, Sec. 3.



The scheme  
of govern-  
ment: general  
features

(which of course is broadly true), the architects of the new scheme of government struck out on lines of their own devising—lines calculated, as they thought, to ensure monopoly of control in the name and interest of the proletariat. Not only did they rigidly centralize political authority geographically, both within the individual republics and in the U.S.S.R. as a whole, but they completely discarded everything resembling the Western shibboleth of separation of powers. Checks and balances, inviting procrastination and division of responsibility, are conspicuously absent. Legislative and executive authority rest, to all intents and purposes, in the same hands; and there is no independent judiciary. All governmental power is canalized into one swiftly moving stream of unimpeded action.<sup>1</sup>

Basic in the whole arrangement is the system of soviets. As already pointed out,<sup>2</sup> the soviet, or council of workingmen's delegates in factory or workshop, made its earliest appearance in Russia in connection with the attempt to organize a general strike during the revolutionary movement of 1905. Reappearing during the February–March revolution of 1917, bodies of the kind this time continued in existence and spread to provincial towns and villages and to the army; and in the ensuing November revolution they so clearly proved their worth that during the early months of the new government the leaders devised a

<sup>1</sup> This, of course, does not make for democracy; but the system, at least in its present stage, was not meant to be democratic. The situation has been described lucidly as follows: "In any event, the system of soviets supplies, in fact, only the form of a workingmen's democracy. The party officials who control the policy of the Communist party are . . . largely identical with the governmental officers who control the armed forces of the nation; and these same men supervise the elections and dominate the deliberations of the soviet bodies to whatever extent they deem necessary in order to secure the ultimate decision they desire. Generally the Communist writers do not deny this. For it is their explicit doctrine that until the masses have been made ready—by practical experience, technical knowledge, social outlook, and moral conviction—to participate in the activities of a completely communistic society, the actual direction of social policy must be in the hands of that minority whose interest and point of view most faithfully represent the long-run interest and point of view of the entire working population. . . . Thus the 'general will' of the proletariat is to be represented and given effect only in the Hegelian way—by vesting decision and power in the hands of those best qualified, intellectually and morally, to discover and execute the 'real will' of the whole proletariat—in the hands, that is, of men who are most expert in diagnosing the causes of the disorders from which the masses actually desire deliverance and in discovering and applying the proper remedies." F. W. Coker, *Recent Political Thought*, 172–173.

<sup>2</sup> See p. 855, note 1, above.

standard structure for them, which was incorporated in the constitution of 1918. Representing workingmen only, and primarily in what were regarded as their natural constituencies, *e.g.*, factory, workshop, or union, rather than in geographical districts, the soviets came to be looked upon by Communists generally as the natural units or elements of the future Communist society, and as meanwhile the indispensable bases of the transitional proletarian dictatorship. "The only form of proletarian dictatorship," declared the Second Congress of the Third International, "is a republic of soviets."

The structure of government in the U.S.S.R. is thus largely a matter of soviets and soviet representation. At the base of the pyramid are multifold (a) village and (b) town and factory soviets. Above these, and composed of delegates chosen by them, are district soviets. On the next level are regional congresses of soviets, composed of soviet delegates, and still above these, "republic" congresses, of which by far the most important is, of course, that of the R.S.F.S.R. Finally, at the top, stands the All-Union Congress—also a "congress of soviets." Authority goes on both direct and indirect lines from bottom to top, with the rank-and-file workingmen in theory the ultimate sovereign. As frequently described, the system is one in which occupational, or functional, representation has replaced the characteristic Western forms of geographical representation; and it is true that the primary units are organizations of workers, with urban soviets made up for the most part of delegates chosen by workers grouped in factories and labor unions. Even the towns are, however, geographical areas; rural soviets consist of representatives of peasants in given localities; and the scheme of district and regional congresses—not to mention the All-Union Congress itself—is mainly geographical. Functionalism underlies the system, in the sense that only certain occupational interests find representation. But the pattern of graduated soviets and congresses is definitely geographical.

The principle of election runs throughout the system, but under carefully devised safeguards. In the villages, the voters send to the local soviet one delegate for every 100 people; in the towns, one for every 1,000; village and urban soviets elect delegates to the district soviets, these bodies choose representatives in the regional congress, and the regional congress, in turn, sends

The representative system: suffrage and elections

spokesmen to the All-Republic and All-Union Congresses; furthermore, town and factory (though not village) soviets send delegates directly to the regional congresses and to the All-Republic and All-Union Congresses.<sup>1</sup> Elections to the various congresses are held every two years, the arrangements being, at best, somewhat complicated because of the tendency of the central authorities to leave many details to the discretion of local officials. In order to vote, or to be chosen a delegate, a person must be 18 years of age, although even this regulation is subject in some cases to local amendment if consent of the central authorities is obtained. Of residence, religious, nationality, and sex qualifications, there are none; but an economic qualification more than makes up for the lack: the voter, unless incapacitated, must be earning his livelihood "by productive work useful to society," or must be engaged in domestic pursuits which enable other men or women to follow their own professions. The crux of the matter lies in the meaning of "productive work"—a term which the Communists have been content to define negatively by listing in the various constitutions certain classes of people who are, on economic grounds, to be excluded from the suffrage and from office-holding. Among these are persons employing hired labor for profit, persons living on an income not derived from their own labor, persons engaged in private business, and commercial agents and traders. Classes excluded on non-economic grounds include monks and clergymen of all religious faiths; employees, agents, and officials of the former tsarist police; members of the former ruling dynasty; convicted criminals; and persons adjudged mentally incompetent.<sup>2</sup> In practice,

<sup>1</sup> Village, *i.e.*, peasant, soviets are discriminated against as compared with urban soviets not only in the fashion here indicated, but also in that in the regional congress they have only one spokesman for every 125,000 inhabitants, as compared with one urban delegate for every 25,000 voters (equivalent to perhaps 60,000 inhabitants). Constitution of the U.S.S.R., Art. 9. The reason for favoring the urban workers is that they are generally more sympathetic with the Communist régime than are the peasants.

<sup>2</sup> It is hardly necessary to add that the great bulk of voters are not members of the Communist party. Non-Communists may seek election, and many do so—only, however, as "non-party" men, since no organized political group aside from the Communist party is tolerated. The indirect modes of selecting members of the higher congresses, and also of the superior administrative bodies, result in the elimination of most non-Communists before these levels are reached. At the bottom, however, non-Communists preponderate heavily, holding something like 86 per cent of the seats in village soviets and between 50 and 60 per cent in urban soviets in 1928.

the exclusion process seems to be administered in a somewhat haphazard fashion, the matter being left as a rule to the not always unbiased judgment of the local soviets. From this it should not, however, be assumed that voting is a privilege reserved for a select few; at the time of the 1931 elections there were in the U.S.S.R. no fewer than 84,000,000 registered voters, more than 60,000,000 of whom actually cast their ballots.<sup>1</sup> Electoral procedure is exceedingly simple. The eligible voters assemble at the appointed time in the presence of an electoral commission; groups or individuals present the names of candidates; there is a show of hands on each name; nominees receiving a majority vote are forthwith declared elected.

When the Bolsheviks assumed the reins, a number of considerations favored a complete recasting of local administrative areas. The task, however, was formidable, and while plans for a new system of units, drawn along economic lines, were soon prepared, they were only partly put into operation. Consequently, for a good while old and new systems existed and functioned, more or less confusedly, side by side. As in time the outlying republics were formed, the new economic divisions were introduced, and more recently they have, in Russia proper, almost completely supplanted the areas inherited from tsarist days. As already pointed out, the primary rural and urban units are, respectively, the village and the town, each with its elective soviet. In larger towns, a *presidium*, or executive committee, conducts affairs between the monthly plenary meetings; and in any event, in both urban and rural areas, the continuous work of administration is carried on by miniature departments such as those of finance, health, and social welfare, with a good deal of attention to the furtherance of political propaganda.<sup>2</sup> District soviets and regional congresses meet infrequently, but in each instance there is a *presidium*; also in each area there are administrative departments, controlled by the corresponding All-Republic departments and, in turn, controlling the appropriate branches of the local governments. In theory, the arrangements

Local, district, and regional authorities

<sup>1</sup> The proportion of urban and rural electors who voted was 79.6 and 70.4 per cent, respectively. In urban areas, the sexes participated almost equally, but in rural areas the percentages of males and females voting were 78 and 63.4, respectively. See L. Teper, "Elections in Soviet Russia," *Amer. Polit. Sci. Rev.*, Oct., 1932.

<sup>2</sup> B. W. Maxwell, *The Soviet State; A Study of Bolshevik Rule* (Topeka, Kan., 1933), Chaps. iv-vi.

provide for a considerable amount of local autonomy and political responsibility. Just as the electoral process leads from the local soviet to the district, from the district to the region, and from the region to the nation, so—Communist exponents will tell you—essential political and economic authority begins in the village and farm, and is projected upward from level to level. Many circumstances, however—among them the brief and infrequent sessions, as well as the unwieldy numbers, of the regional and republic congresses—combine to frustrate all genuine decentralization and actually to enhance the most conspicuous feature of the soviet system, *i.e.*, the concentration of power in the hands of a few leaders.

All-Union  
Congress of  
Soviets

The position of the All-Union Congress affords further illustration of the sharp contrasts between theory and practice in the Soviet régime. In the constitution, one finds categorical statements to the effect that "the supreme organ of authority of the U.S.S.R. is the congress of soviets of the U.S.S.R. . . . The confirmation and alteration of the fundamental principles of the present constitution come exclusively within the competence of the congress of soviets of the U.S.S.R." <sup>1</sup> But neither these nor other similar assertions should be taken at face value. Actually, the All-Union Congress is merely a cumbersome assemblage of some 1,500 delegates which meets in the different republics' capitals in rotation for a brief session every two years. Reports from the officers of the permanent central agencies are heard and invariably approved, virtually without debate; carefully prepared resolutions are introduced and promptly passed; a slate of candidates for the Union Soviet <sup>2</sup> is presented, and the choice speedily ratified; speech after speech eulogizes the progress of the Communist state; and the enthused delegates—of whom three-quarters or more are already Communists—sing the "Internationale" and return to their homes filled with pride and with renewed zeal for the cause. Far from being either a legislature or a constituent assembly, the Congress is thus hardly more than a spectacle staged with much fanfare for the benefit of both native and foreign observers; in other words, it is essentially an instrumentality of propaganda. Aided by the gathering's unwieldiness, the brevity of its sessions, and the

<sup>1</sup> Art. 8.

<sup>2</sup> See following paragraph.

preponderance of party members among the delegates, control comes entirely from behind the scenes.

Searching for the actual location of power, one next comes upon a bifurcated body known as the Central Executive Committee. Charged with conducting Union affairs during intervals between sessions of the All-Union Congress, this agency has—as would be inferred from the foregoing comment on the Congress—substantially independent authority, primarily legislative but also executive and administrative as well. One branch, usually referred to as the Union Council, or Union Soviet, consists of persons elected by the All-Union Congress from among the delegates of the various republics, in proportion to population; the other—the famous Soviet of Nationalities, planned to give a special voice in the government to the numerous minority groups throughout the Union—brings together appointees of the autonomous republics and autonomous “regions,” five and one from each, respectively. Both branches, or houses, are numerically large. The first has at present 414 members, the second 139, yielding the external appearance far more of a Western parliament than of a “committee”; and in both the representatives of Russia proper preponderate. The two are coördinate in power; and legislative proposals, though commonly presented from the outside, first to a sort of main committee, the Presidium, and afterwards to the two chambers meeting in joint session, become law only after being considered and adopted by majority vote by both, acting separately. And by constitutional requirement, “all decrees and resolutions determining general principles of the political and economic life of the U.S.S.R.,” or “introducing radical alterations in the existing practice of the state organs of the U.S.S.R.,” must be so presented.<sup>1</sup> The Presidium consists of nine members designated by each chamber separately (primarily as its own presidium) plus nine others named by the two in joint session. The chambers meet only three times a year, and in practice legislative decisions are largely made by these 27 persons, subject to more or less formal ratification by the chambers themselves. The Presidium is indeed referred to in the constitution as, in the intervals between sessions, the “supreme legislative, executive, and administrative organ of authority of the U.S.S.R.”<sup>2</sup>

Organs of actual central control:

1. Central Executive Committee

<sup>1</sup> Art. 18.

<sup>2</sup> Art. 29.

2. Council of  
People's  
Commissars

Acting thus for the huge bicameral Committee, the Presidium performs most of the day-to-day work of legislation. Similarly, executive and administrative functions are performed principally through a *Sovarkom*, or Council of People's Commissars.<sup>1</sup> Here we have the closest approach to a Western council of ministers, although the comparison often made with Western cabinets is apt to be misleading. Commissariats, or departments, are of two types—All-Union commissariats (foreign affairs, army and navy, foreign trade, transportation, waterways, posts and telegraphs, and agriculture) and “unified” commissariats (heavy and light industry, labor, finance, statistics, etc.), the former, as explained above, having their respective fields to themselves throughout the Union, the latter sharing their administrative tasks with similar commissariats maintained in the several constituent republics. For justice, health, and social welfare—functions allocated entirely to the individual republics—there are republic commissariats only. Union commissars (in departments of both types) are appointed by and responsible to the Central Executive Committee, although with much influence from authorities of the Communist party; republic commissars are named by the central executive committees of the respective republics. Commissars at Moscow hold meetings, and therefore literally constitute a “council,” with the chairman of the State Planning Commission as an additional member, and with other key officials, including the president of the State Political Administration, the president of the State Bank, and the president of the All-Union Council of Trade Unions, participating in an advisory capacity. Commissars, like Western ministers, are, of course, occupied primarily with the administrative work of their respective departments. They, however, in addition, prepare the Union budget, plan financial legislation, submit legislative projects to the Central Executive Committee, and promulgate decrees and orders which, unless revoked by the Committee or its Presidium, have binding effect as law throughout the Union.<sup>2</sup>

<sup>1</sup> For the decree of November 12, 1923, organizing this Council, see W. R. Batsell, *op. cit.*, 599–605.

<sup>2</sup> Useful general descriptions of the workings of the governmental system include W. R. Batsell, *Soviet Rule in Russia* (cited above); H. N. Brailsford, *How the Soviets Work* (New York, 1927); B. W. Maxwell, *The Soviet State: A Study of Bolshevik Rule* (cited above); and, in compact form, V. M. Dean, “The Political Structure of the Soviet State: The Government of the Union,” *Foreign Policy Reports*, VIII, No. 2, Mar. 30, 1932. Cf. R. L. Buell *et al.*, *op. cit.*, 356–395.

There being no attempt at separation of governmental powers, the Soviet leaders have never given any great amount of attention to the administration of justice, regarding it merely as an ordinary function to be looked after primarily by the governments of the constituent republics in conformity with the Communist ideology of class justice. Punishments meted out for offenses designated as politically dangerous, *i.e.*, crimes against the state or against its economic policy, are likely to be severe. In dealing with offenses of other sorts, the avowed intent is not so much retribution as social reconstruction. Prisons are as nearly self-governing as they can be made; vocational training is given during detention; and the length of the sentence often varies with the occupation and economic class of the convict.

Judicial organization

Court organization and procedure are simple. In each republic are local and regional tribunals, with a supreme court at the top. Judges in the lower courts are appointed by regional executive committees; those in the supreme court are selected by the central executive committee of the republic; and there are virtually no eligibility requirements except that supreme court justices must have served in the lower courts. In the main, the plural-judge system is in use. Lawyers are regarded as public servants, and as such must, if the court so rules, serve impecunious clients without remuneration. Attached to each tribunal is a public prosecutor with powers extending even to the investigation of the legality of acts of public officials.

The supreme court of the U.S.S.R., appointed by the Central Executive Committee of the Union, decides disputes among the constituent republics, provides the supreme courts of the republics with advisory interpretations, and may examine accusations against high officials of the Union government. It has also what may be termed a qualified power of judicial review, in that it may, upon request of the Central Committee, give an opinion as to the constitutional validity of acts of the various republican governments. Such opinions are only advisory, and the Committee may or may not choose to be guided by them.<sup>1</sup>

Recognizing that they could keep their great experiment going and themselves in control of it only by stiff policies of censorship, repression, and coercion, the Soviet authorities early set up an

The secret police

<sup>1</sup> B. W. Maxwell, *op. cit.*, Chap. ix; J. Zelitch, *Soviet Administration of Criminal Law* (Philadelphia, 1929).



auxiliary instrument of so-called justice, the *Cheka*, or secret police. Modelled upon a similar establishment existing under the tsarist régime, and designed particularly to ferret out and repress counter-revolutionary and other subversive activities, the *Cheka* soon became, for the world at large, the principal symbol of Soviet arbitrariness and tyranny. Operating under a cloak of complete secrecy, and endowed with power to make arrests, conduct its own trials (such as they were), and summarily execute persons found guilty, the organization indeed gained such mastery of the country that in 1922 the Soviet authorities found it expedient to curb it in certain directions and place its activities on a somewhat more regular basis. The name was changed to State Political Administration (G.P.U.) and the organization itself attached to the office of the Commissar for the Interior. Similar establishments having been set up in the other republics, a Unified Political Administration (O.G.P.U.) was founded, when the U.S.S.R. was formed, to coördinate and direct all activities of the kind. This consolidated establishment is the only police force which operates throughout the Union; all others being simply local forces.

The particular task of the secret police is still that of safeguarding the Soviet state by detecting and punishing people who menace it; and although the use of capital punishment is considerably more restrained than in earlier years, there is still a legally unchecked power of secret arrest, trial, conviction, and execution. The organization works through no fewer than six sections: an operative branch, which directs the movements of such troops as are required; a foreign department; an economic department; a transport inspection department; a military department, which keeps watch over the morale of the Red army; and a secret service, having to do directly with repressing counter-revolutionary activities. As the menace of counter-revolution has progressively declined in recent years, the work of the secret service has, however, been shifted increasingly to preventing industrial sabotage and checking up, in general, on such groups and persons as are suspected of plotting the failure of Soviet industrial plans.<sup>1</sup>

From the beginning, the Bolshevik leaders were determined to create out of a huge population, vast stretches of arable land,

<sup>1</sup> B. W. Maxwell, *op. cit.*, Chap. xv.

and largely undeveloped mineral and power resources, a mighty state in which the future inhabitants would be free from what were regarded as the vicious aspects of a decaying capitalism. With this in view, a rigid state control over all the major forces of production, distribution, and consumption was necessary, a policy which has been carried out so completely that today 90 per cent of all factory and mine production is under government operation and less than 10 per cent of the total trade turnover passes through the hands of private dealers.<sup>1</sup> Similarly, although with less striking success, the government has sought to develop coöperative agricultural production on great state farms. To facilitate these vast projects, a hitherto unprecedented attempt at government economic planning has been undertaken. Data are assembled and plans developed, first of all by a State Planning Commission, familiarly known as "the Gosplan," in consultation with a Supreme Economic Council, which is the highest executive authority in the entire industrial field. Resulting programs of action, whether dealing with production schedules for isolated industries or with a project of such magnitude as the *Piatiletka*, or Five-Year Plan, must afterwards be approved by the Council of Labor and Defense, a sort of economic cabinet consisting of members of the Council of People's Commissars, assisted by a number of economic and financial experts.<sup>2</sup> It is interesting and significant to observe that membership in this Council is the only governmental, as distinguished from party, position held by the so-called dictator Stalin.<sup>3</sup>

Not unnaturally, those who created the Soviet state considered that until after the masses should have been won over fully to the principles of the revolution the governing authorities must rule with an iron hand. For guaranteed personal rights and liberties, as found in Western bourgeois states, no place could be provided, and therefore one finds in the constitutions of the

Private  
rights

<sup>1</sup> For brief accounts, see W. H. Chamberlin, *op. cit.*, Chap. vi, and *The Soviet Planned Economic Order* (Boston, 1931); B. W. Maxwell, *op. cit.*, Chaps. xvi-xvii. More extended treatment will be found in C. B. Hoover, *The Economic Life of Soviet Russia* (New York, 1930); G. T. Grinko, *The Five-Year Plan of the Soviet Union* (New York, 1930); M. Farbman, *Piatiletka: Russia's Five-Year Plan* (New York, 1931); and E. Burns, *Russia's Productive System* (New York, 1931).

<sup>2</sup> The Planning Commission is really a committee of this body.

<sup>3</sup> V. M. Dean, "The Political Structure of the Soviet State: The Government of the Union," *Foreign Policy Reports*, VIII, No. 2, Mar. 30, 1932.

various republics nothing remotely resembling bills of rights. For example, instead of a guarantee of freedom of the press, the constitution of 1918 had a passage as follows: "In order to secure for the laboring masses genuine freedom for expressing their opinion, the R.S.F.S.R. annuls the dependency of the press upon capital and hands over to the working class and the poor peasants all the technical and material resources necessary for the publication of newspapers, pamphlets, books, and all other printed matter, and guarantees their free circulation throughout the country."<sup>1</sup> A little reading between the lines will reveal a situation which still holds true in all parts of the Union, namely, that there is no privately owned press, that all printed matter is issued by, or under the direction of, a soviet, a trade union, or a committee of the Communist party, and that, criticism being thus outlawed, all published opinion is Communist in nature or tendency.<sup>2</sup> Other private rights are in a similar position. Thus, although the R.S.F.S.R. constitution specifically places at the disposal of the laboring masses "all premises fit for public gatherings" and recognizes "the right of the citizens of the Soviet republic freely to organize meetings, processions, etc.,"<sup>3</sup> it is in practice impossible to secure permission to hold meetings of any kind if intended for, or likely to give rise to, political discussion. Academic freedom is non-existent, and a professor found teaching non-Communist doctrine would speedily be replaced. The writ of habeas corpus is unknown, and no person, whatever his position, is immune from danger of nocturnal arrest and secret commitment at the hands of the political police.<sup>4</sup>

The Soviet  
state and re-  
ligion

The support notoriously given by the Orthodox Church to the reactionary excesses of the tsarist régime was such that any revolutionary government could be depended upon, as a mere matter of self-preservation, to confiscate that organization's wealth and uproot its power. Moving at first with well-justified prudence, the Bolsheviks were content to go no farther in the constitution of 1918 than to provide for the disestablishment of the church, secularization of the school system, and guarantees of freedom for "religious and anti-religious propaganda." As

<sup>1</sup> Art. 14.

<sup>2</sup> K. Martin, "The Russian Press," *Polit. Quar.*, Jan.-Mar., 1933.

<sup>3</sup> Art. 15.

<sup>4</sup> B. W. Maxwell, *op. cit.*, Chap. xii; R. Baldwin, *Liberty under the Soviets* (New York, 1929).

power grew, however, church properties and establishments were confiscated, while the officially supported propaganda agencies turned their efforts to combating all influences of organized religion, especially among the younger generation. As already mentioned, atheism was from the beginning one of the tests for membership in the Communist party; and in 1929 a decree of the Central Executive Committee, while recognizing and regulating religious associations, sought to further atheistic opinion by (in effect) deleting from the constitution all phrases giving religion and atheism an equality of status.<sup>1</sup> The result was to make atheism a state dogma; and in later days, with atheists alone enjoying the right to teach their beliefs, Communist leaders have been confidently expectant that after the present generation shall have passed, the Russian soul will be found to have been molded completely into their own materialistic cast. So confident are they of this that the more militant phases of the war on religion have been abandoned, and numerous Greek Orthodox and other churches are permitted to remain open and hold services, even in Moscow.<sup>2</sup>

When Lenin died, in 1924, supreme control of the Soviet order passed into the hands of a vigorous trio—Stalin, Zinoviev, and Kamenev. In time, serious differences developed among the three over various orientations of policy, especially in relation to agriculture and the peasants. Stalin—himself a Georgian peasant—insisted that more peasant sympathy and support must be won, even at the price of concessions to the “Kulaks,” or middle group of peasant landholders; and despite the opposition of his colleagues, he succeeded in swinging the party largely to his point of view. In 1927–28, several leaders—among them Zinoviev and Trotsky—who refused to go along were expelled from the party, and in some instances, *e.g.*, Trotsky, banished from the country. Having thus broken down opposition, the Stalin group unexpectedly reverted to original policy, proceeding as rapidly as it could with forced collectivization of land and crushing Kulak resistance mercilessly. The over-

Soviet problems and prospects

<sup>1</sup> For text, see *Internat. Conciliation*, No. 261, June, 1930.

<sup>2</sup> B. W. Maxwell, *op. cit.*, Chap. xiii; W. H. Chamberlin, *Soviet Russia*, Chap. xiii; S. Eddy, *The Challenge of Russia* (New York, 1931), Chap. ix; J. Hecker, *Religion under the Soviets* (New York, 1927).

shadowing problem of the Soviet authorities continues, however, to be that of the peasant—how to win his sympathy, and, even more imperative, how to induce or compel him to produce the foodstuffs of which an underfed nation stands urgently in need. It has been one thing to command the support of the industrial and urban workers, and quite another to secure acceptance of a collective economy by a strongly individualistic peasantry which, after all, constitutes the great body of the Russian people. Many observers consider that little progress has been registered on this all-important sector.

In the domain of foreign policy, the implacable doctrine of world revolution has been compelled to compromise with a world which seems little disposed to emulate the Soviet example. For years, Russia was isolated, largely even in business and trade. Foreign governments and people simply waited, somewhat nervously, for the new and startling régime to collapse. Time passed; the régime entered new stages; but no sign of an end appeared on the horizon, and governments gradually were induced or compelled by economic and other exigencies to recognize and do business with the Moscow authorities. For years, only the United States, among leading Powers, held off, but full recognition came from this quarter also late in 1933. Meanwhile, the Soviet Union has coöperated cautiously with the League of Nations, has concerned itself actively with developments in the Far East, has fished with profit in the troubled waters of post-war European politics, has pressed for the fullest possible measure of disarmament, has surrounded itself on west and south with a protecting wall of non-aggression treaties, and has given evidence generally of intending to play a rôle of influence and power even though in a world clinging stubbornly to capitalism.<sup>1</sup>

Any attempt to draw up a balance sheet evaluating the strong and weak features of the Soviet system is doomed to failure because of the bewildering complexities of the problem, and because of the brevity of time since the Revolution. Only a faith bordering on mysticism could contemplate with confidence the stupendous task of creating out of the vast conglomeration of peoples (even in European Russia alone), largely illiterate and

<sup>1</sup> V. M. Dean, "The Soviet Union as a European Power," *Foreign Policy Reports*, IX, No. 1, Aug. 2, 1933; L. Fischer, *The Soviets in World Affairs*, 2 vols. (New York, 1930).

even primitive, an educated citizenry in which social welfare will replace individual gain as a motivation for activity. And only a faith bordering on fanaticism could sustain the attempt to transform a non-industrial, relatively undeveloped, country into one in which, with the aid of tireless economic planning, the achievements and potentialities of a technological age will be harnessed to the promotion of the highest public good. Whether success or failure, full or partial, crowns the efforts of the Soviet experimenters, the whole proceeding represents an unprecedentedly ambitious attempt to furnish a workable solution to the perennial problem of adjusting the forces and methods of government to meet the needs of a changing society.<sup>1</sup>

<sup>1</sup> An excellent brief historical review of the Soviet period will be found in W. C. Langsam, *The World Since 1914*, Chap xviii.



# INDEX

- Abgeordnetenhaus*, in Prussia, 661.
- Absent voting, in Great Britain, 198  
note; in Germany, 733-734.
- Act of Settlement (1701), 69.
- Adjoints*, in French commune, 632-633.
- Administration. *See* Executive departments, Ministries, Civil service.
- Administrative justice, in Great Britain, 140-141.
- Administrative law and courts, not developed in Great Britain, 369-370; status in France, 610-616; in Germany, 792; in Italy, 818.
- Administrative legislation, growth in Great Britain, 135-136; delegation of power by Parliament, 136-139; in France, 486-487; in German Republic, 708-713; in Italy, 815.
- Admiralty Board, in Great Britain, 119-120.
- Advisory committees, in Great Britain, 134-135.
- Advisory opinions, in Russia, 881.
- Ältestenrat*, in German Reichstag, 743.
- Agriculture and Fisheries, ministry of in Great Britain, 129.
- Air, ministry of in Great Britain, 121.
- Aldermen, in English county council, 391-392; in borough council, 396.
- Alexander I, proposes reforms in Russia, 848-849.
- Alexander II, establishes *zemstvos*, 840.
- All-Union Congress, in Soviet Russia, 878-879.
- Alternative vote, question in Great Britain, 203-204.
- Amendments, constitutional. *See* Constitutions.
- Amtsgerichte*, in German judicial system, 788-789.
- Anglo-Saxons, political institutions, 18-20.
- Anschluss*, of Germany and Austria, 688 note.
- Antiparliamentarism, in France, 571-572; in Nazi Germany, 775-784
- passim*; in Fascist Italy, 826-838 *passim*.
- Anti-Semitism, in Nazi Germany, 775-776, 779-781.
- Appointments, of ministers in Great Britain, 88-97; in British civil service, 153-156; of judges in Great Britain, 382-383; in English local government, 393-394, 399-400; of ministers in France, 496-499; in French civil service, 513-515; of judges in France, 604-605; in French local government, 624-628, 633-634; of chancellor and ministers in Germany, 716-717; in German civil service, 723-725.
- Appropriation Act, in Great Britain, 282.
- Appropriations. *See* Budget.
- Arbeitsgerichte*, in German judicial system, 791 note.
- Arrondissement*, as electoral area in France, 523, 535-536, 538; loses judicial functions, 601; created, 619; general functions, 629; in Paris, 635.
- Article 48, of German republican constitution, presidential powers under, 709-713.
- Ashley, P., quoted, 795.
- Asquith, Herbert, heads coalition government, 318; leader of Independent Liberals, 319-322.
- Assize courts, in Great Britain, 376.
- Attorney-General, British, 128.
- Auditing, in Great Britain, 117-118, 404; in France, 570.
- Austria, in Confederation of 1815, 646-647; forced out of Confederation, 649; union with Germany forbidden in 1919, 688 note.
- Bagehot, Walter, describes cabinet system, 35, 51 note; quoted, 59.
- Baldwin, Stanley, becomes prime minister, 321.
- Ballot, introduced in English elections, 197; form of, 198; form in France,



- 532-533; in Germany, 740; in German municipal elections, 805.
- Barthélemy, J., quoted, 465.
- Bavarian Christian People's party, in Germany, 959.
- Beckerath, E. von, quoted, 830.
- Berlin, government of, 805-807.
- Bill drafting, in Great Britain, 263-264.
- Bill of Rights, of 1689 in England, 31-32; problem of in France, 464; in German republican constitution, 681-683; suspensions in Germany, 684.
- Bills. *See* House of Commons, Chamber of Deputies, Reichstag, etc.
- Bismarck, rôle in unification of Germany, 649-650; drafts constitution of 1867, 651; as chancellor, 656-657.
- Bloc National*, in France, 582, 586-587.
- Board of Trade, in Great Britain, 128-129.
- Bolshevik party, rise in Russia, 857-859. *See* Communist party.
- Boroughs, reform of government, 387-388; classes, 395; charters, 395-396; government compared with that of counties, 396-397; mayor, 397; council, 397-398; permanent service, 399-400; metropolitan (London), 401.
- Brüning, Heinrich, as chancellor of Germany, 777.
- Bryce, Lord, report of commission on second chamber, 222-224; quoted, 312, 563 note, 636-637.
- Bryce Report, on second chamber, 222-224, 226.
- Budget, in Great Britain, 281-282, 285-287; in France, 567-570.
- Bundesrat, in German Empire, 657-658.
- Bureaus, in French chambers, 551-555.
- Bürgermeister*, in German municipalities, 801-804.
- Cabinet, in Great Britain, origins, 34-35; distinguished from ministry, 82; composition, 83-84; increased size, 84-85, 86; "war cabinet," 85-86; importance, 98; as working executive, 98-99; relation to legislation, 99-100; principle of ministerial solidarity, 100-101; collective responsibility, 101-103; committees, 108; meetings, 108-109; privacy of proceedings, 109-110; records, 110-111; secretariat, 111-112; control over parliamentary dissolutions, 186-187; control over creation of peers, 212; power over finance, 286-287; control over legislation, 292-293; over finance, 293; over administration, 293-294; means of enforcing responsibility, 294-296; consequences of dominant position, 297-301; overburdening, 299; relation to parties, 313-314. For French, German, and other cabinets, *see* Ministry.
- Campaign expenditures, in Great Britain, 193-195, 354-357; in France, 530-532; in Germany, 767-769.
- Candidates. *See* Elections, Nominations, Parties.
- Canton, created, 619; functions, 629-630.
- Cartel des Gauches*, in France, 582, 586-587.
- Catherine II, of Russia, 848.
- Caucus, rôle in British party organization, 343-344.
- Cavour, Count, rôle in unification of Italy, 810-811.
- Censure, of ministers in British Parliament, 296.
- Center party, in imperial Germany, 663-664; in German Republic, 758-759; disbanded, 782.
- Central Executive Committee, in Soviet Russia, 870.
- Centralization, in Great Britain, 402-406; in France, 622-624, 635-640; in Germany under Weimar constitution, 691-696; under Nazi régime, 696-699.
- Central Office, in British party organization, 347-354 *passim*.
- Chamber of Deputies, in France, constitutional and legal basis, 521-522; present composition, 522-523; term of members, 523-524; qualifications, 524-525; parliamentary suffrage, 525-526; question of woman suffrage, 526-527; of family voting, 527; electoral registration, 527-528; non-voting, 528-530; nomination of candidates, 529-530; electoral campaign, 530; campaign expenditures, 531-532; polling, 532-534; purity of elections, 534-535; problem of electoral areas, 535-536; experiment with proportional

- representation, 537-538; aspects of personnel, 538-539; criticism and proposals, 539; sessions, 547-548; publicity of proceedings, 548-549; status and pay of members, 549-550; officers, 550-551; development of committee system, 551-552; committee system today, 552-555; rules, 555-556; government and private members' bills, 556-558; workings of committee system, 558-560; debate, 561-563; voting, 563-564; interpellation, 564-565; relations with Senate in legislation, 566-567; rôle in financial legislation, 567-570; party situation, 578-579; principal groups, 579-583; in Italy, before Fascist period, 815-817; under Fascist régime, 834-836.
- Chancellor, in German Empire, 656-657; in German Republic, 714-716; appointment, 716; functions, 716-717; responsibility, 717-718.
- Chancellor of Exchequer, in Great Britain, position in Treasury, 116-117.
- Charles Albert, grants constitution to Piedmont, 810.
- Charters, of English boroughs, 395-396.
- Cheka*, in Soviet Russia, 861 note, 881-882.
- Church and State, in Great Britain, 68-69; in France, 588-589; in Italy, 820, 840-841.
- Cities, government of. *See* Municipal government, Boroughs.
- Citizenship, in Germany, 683 note.
- "City," of London, 401.
- Civil List, in Great Britain, 71-72.
- Civil Service, in Great Britain, contrasted with ministry, 142-144; reform, 146-150; present extent, 150-151; classification, 151; Treasury control, 151-152; Civil Service Commission, 152-153; recruitment, 153-156; promotions, 156; removals, 156; pay, 157; pensions, 157; organization, 158-160; Whitley councils, 160-162; criticisms, 162-163; strong points, 163; not a bureaucracy, 163-164; in English local government, 394, 399-400; underlying traditions in France, 511-512; numbers, 512-513; recruitment, 513-516; pay and pensions, 516; organization, 516-518; in commune, 633-634; early development in Germany, 721-723; in twentieth century, 723; status under Weimar constitution, 724-725; "restoration" under the Nazis, 725-728.
- Civil Service Commission, British, 148-149, 152-153.
- Closure, in British House of Commons, 258-260; in French Chamber of Deputies, 562-563.
- Coalition government, in Great Britain, 318-321, 327-330. On France, Germany, Italy, *see* Ministry.
- Code Civil*, in France, 595-596.
- Coker, F. W., quoted, 830, 874 note.
- Colonial Office, in Great Britain, 124-125.
- Committee of Imperial Defense, in Great Britain, 108.
- Committee of the Whole, in British House of Commons, 246-247, 277-279.
- Committee on Ministers' Powers, in Great Britain, 139 note.
- Committees, of British privy council, 81-82; of British cabinet, 108; in British House of Commons, 246-250; in House of Lords, 251; financial estimates referred, 287-289; of English county council, 393; of English borough council, 308; development in French Parliament, 551-552; present system, 552-555; workings, 558-560; rôle in financial legislation, 568-569; system in German Reichstag, 743-744; in Italian Chamber of Deputies, 816-817.
- Common law, in Great Britain, 362-366.
- Commonwealth of Nations (British), rise and nature, 421-422; imperial conferences, 422-423; Statute of Westminster, 423; dominions and their governments, 423-425; dominion autonomy, 425-432. *See* Dominions, Empire (British).
- Commune, in France before 1789, 618-619; democratized, 621-622; varieties, 630; council, 631-632; mayor and assistants, 632-633; permanent service, 633-634; in Prussia, 799-800;

- in Italy before Fascist period, 819-820; under Fascist régime, 839.
- Communist party, in France, 582, 585; in German revolution of 1918-19, 670-671; in German Republic, 761-762; in Germany in period 1919-29, 771-774; outlawed, 782; in post-war Italy, 825; origins in Russia, 857-859; doctrine, 863-864; composition, 865-866; obligations of members, 866-867; organization, 867; propagandist activities, 868; relation to Third International, 860.
- Comparative government, study of, 8-14.
- Conference committees, in Great Britain, 267-268.
- Conservative party, in Great Britain, dominance in House of Lords, 217-218; attitudes on Lords' reform, 224-225; origins, 316; from 1832 to 1914, 316-318; during World War, 318-320; secedes from war-time coalition, 321; in power after 1924, 324-325; in election of 1931, 328; composition, 330-333; assured position, 335-336; local organization, 345; national organization, 347-348; finances, 354-355; auxiliary organizations, 357.
- Consolidated Fund, in Great Britain, 118-119.
- Constitution, meanings of term, 40-41; nature of British, 41-42; elements, 41-47; growth, 47-50; in France after 1791, 447-455; of Third French Republic adopted, 462-463; characteristics, 464-465; why lasted, 466-467; amending process, 467-469; amendments adopted, 469-470; relation to organic laws, 470-471; status of judicial review, 471-472; proposed changes, 570-572; of German Empire, 651-652; of German Republic drafted and adopted, 675-676; characteristics, 677-678; sources, 678-679; provisions for amendment, 679-680; earlier amendments and later suspensions, 680-681; status under Nazi régime, 681; emphasis on private rights, 681-682; and on social matters, 682-684; economic provisions, 684-687; provisions regarding *Länder*, 690; of Italy, 812-813; of Russian Socialist Federated Soviet Republics, 871.
- Constitutional Democratic party, in Russia, 850.
- Conventions, in British constitution, 44-47.
- Corporative state, planned in Italy, 837-839.
- Corrupt and illegal practices, in British elections, 194-195.
- Council, of English county, 391-393; of English borough, 396-398; of French department, 628-629; of commune, 631-632. *See* Local government.
- Council of People's Commissars, in Soviet Russia, 880.
- Council of State, in France, 613-614.
- Council of the Empire, in tsarist Russia, 851.
- Counties, in Great Britain, reform measures, 388-389; historic, 390; administrative, 390-391; council, 391-393; permanent officials, 393-394; compared with boroughs, 396-397.
- County boroughs. *See* Boroughs.
- County courts, in Great Britain, 372-373.
- Court of Cassation, in France, 603, 609; in Italy, 818, 839.
- Court of Conflicts, in France, 614 note.
- Court of Criminal Appeal, in Great Britain, 377.
- Courts, general features in Great Britain, 369-372; for civil actions, 372-374; for criminal actions, 374-377; judicial functions of House of Lords, 377-378; high quality of British justice, 379 ff.; rules of procedure, 380-382; bench and bar, 382-384; in France before 1788, 598; Revolutionary reforms, 598-599; present legal basis, 599; justices of the peace, 600; courts of first instance, 600-601; courts of appeal, 601; assize courts, 601-602; jury system, 602-603; Court of Cassation, 603; general features, 603-604; selection of judges, 604-605; position of judges, 605-606; procedure, 607-608; constitutionality of laws, 608-610; administrative tribunals, 610-616; district tribunals in Germany, 788-789; state courts, 789; superior courts, 789; Reich su-

- preme court, 789-790; judges, 790-791; High Court of State, 791; administrative tribunals, 792; in Italy before Fascist period, 818-819; Fascist changes, 839; in Soviet Russia, 881.
- Cromwell, Oliver, 30-31.
- Crown, British, nature, 60-61; sources of powers, 61-62; changes in powers, 62-63; executive powers, 63-66; legislative powers, 66-67; relation to justice, 67-68; as a fountain of honor, 68; relation to established churches, 68-69.
- Crown colonies, status and government, 418-419.
- Cumulative voting, proposed in Great Britain, 205.
- Curia Regis*, in England, 21-22.
- Custom, as an element in the English constitution, 44-47; as a basis of law in France, 593-594.
- Dáil Éirann*, in Irish Free State, 415.
- Declaration of Rights, French, adopted, 442; question of present status, 464 note.
- Deconcentration, in French local government, 638.
- Décrets*, in France, 486-497.
- Democratic party, in Germany, 759-760.
- Department, created as area of local government in France, 610; prefect, 624-627; prefectural staff, 627-628; council, 628-629.
- Department of Overseas Trade, in Great Britain, 124.
- De Valera, Eamonn, leader in Irish politics, 413-415.
- Devolution, proposals in Great Britain, 304-308; obstacles, 308-309.
- Dicey, Edward, on conventions of British constitution, 45-46; on royal prerogative, 61.
- Dictatorship, in Italy, rise of Fascism, 826-828; Fascists in power, 828-829; Fascist party organization, 831-833; governmental organization, 833-836; plans for corporative state, 837-839; repression of opposition, 841; in relation to German presidential powers, 709-713; impending in 1930-32, 777-780; becomes a reality, 780-781.
- Dissolution, of British Parliament, 186-187; of French Chamber of Deputies, 485-486, 548.
- District, rural and urban in Great Britain, 394-395.
- Dominions, British, development of free status, 421-423; effects of Statute of Westminster, 423; governments, 423-425; autonomy in legislation, 425-427; in executive matters, 427; in justice, 427-429; international status, 420-432.
- Dominions Office, in Great Britain, 124-125.
- Duma, established in Russia, 850-851; history, 851-855.
- Ebert, Friedrich, heads German provisional government in 1918, 667-668; elected president of German Republic, 675; death, 703.
- Economic councils, in Great Britain, 134; in Germany, 684-687.
- Education, British Board of, 131-132.
- Edward I, convokes Model Parliament, 25.
- Elections, members of British House of Commons in early nineteenth century, 172-174; reform acts, 174-177; questions during 1885-1918, 177-179; suffrage under act of 1918, 179-184; present status of plural voting, 184; surviving suffrage questions, 185; irregular intervals between, 186; nomination of candidates, 188-189; brevity of campaigns, 191; platforms, 191-192; appeals to the voters, 192-193; regulation of expenditures, 193-195; registration of voters, 195-196; election day and polling day, 196-197; secret ballot, 197; polling process, 198-199; the count, 199; contested seats, 199-200; possible future changes, 201-202; question of majority election, 202-203; question of minority representation, 203-209; of president in France, 475-478; of deputies in France, 525; suffrage, 525-527; voters and non-voters, 528-529; nomination of candidates, 529-530; campaign, 530; expenditures, 530-531; polling, 531-533; purity, 533-534; areas, 534-537; experiment

- with proportional representation, 537-538; of senators, 540-543; in German Empire, 658-659; in kingdom of Prussia, 661-662; of German president, 702-705; of Reichstag in German Empire, 734; of Reichstag in German Republic, 734-740; in German municipalities, 804-805; in Italy before Fascist period, 815-816; law of 1923, 834-835; law of 1928, 835-836; in 1929 and 1934, 836 note; in Soviet Russia, 875-877.
- Electoral registration, in Great Britain, 195-196; in France, 527-528.
- Emperor, position in Germany, 655-656; abdicates, 667.
- Empire (British), general nature, 417; classes of dependencies, 418-420; control over dependencies, 420-421; outlook, 432-433; methods of constitutional growth, 433-434. *See* Commonwealth of Nations.
- Empire (German), establishment, 649-651; constitution, 651-652; federal character, 652-655; system of government, 655-660; political parties, 663-665; movement for political reform, 665-667; collapse, 667.
- Enabling Act, passed in Germany in 1933, 780.
- Equity, in English legal system, 367-368.
- Exchequer, in England, 116.
- Executive departments, in Great Britain, variety of origins and organization, 114-115; Treasury, 115-119; Admiralty, 119-120; War Office, 120-121; Air Ministry, 121; Ministry of Pensions, 121-122; Foreign Office, 122-124; Colonial and Dominions Offices, 124-125; India Office, 125; Home Office, 125-126; Board of Trade, 128-129; Ministry of Agriculture and Fisheries, 129; Ministry of Transport, 129-130; Ministry of Labor, 130; Ministry of Health, 130-131; Board of Education, 131-132; problems of reorganization, 132-134; use of advisory committees, 134-135; administrative legislation, 134-139; administrative justice, 139-141. *See* Ministries.
- Family voting, proposed in France, 527.
- Fascism, rise in Italy, 826-828; in power, 828-829; doctrine, 829-831; party organization, 831-833; government, 833-837; plans for corporative state, 837-839; changes in justice and local government, 839-840; relations with church, 840-841; suppression of opposition, 841-842.
- Fascist party, in Italy. *See* Fascism.
- Feder, G., author of early National Socialist program, 774.
- Federalism, absence in Great Britain, 52; in German Empire, 652-655; question of in German Republic, 691-696.
- Finance, Parliament gains power over in England, 27-28; Treasury department, 115-119; provisions of Parliament Act relating to, 219-220; pay of members of House of Commons, 256-257 note; forms of parliamentary control over, 273-274; preparation of estimates of expenditures, 274-276; consideration by House of Commons, 277-279; preparation of estimates of revenue, 280; budget, 281-282; budgetary procedure compared with American, 283-285; its shortcomings, 285-287; attempts at improvement, 287-288; obstacles, 288-289; legislation in France, 567-570; auditing in France, 570.
- Finance Act, in Great Britain, 282-283.
- Finer, Herman, quoted, 312, 400.
- Foreign Office in Great Britain, 122-124.
- Foreign relations, management in Great Britain, 64-65; in France, 483-484.
- Frankfort, parliament of 1848, 648.
- Frederick William IV, of Prussia, 647-648.
- French Revolution, significance, 436-437; political contributions, 441-446.
- Gemeinde*, in Prussia, 799-800.
- General Confederation of Labor, in France, 591.
- Généralité*, in France, 618-619.
- German Empire. *See* Empire, German.
- German People's party, 958; disbanded, 782.
- Giunta*, in Italy, 818.

- Gladstone, William E., quoted, 104 note.
- Goad, H. E., quoted, 825.
- Government, lofty rôle, 1; expansion of functions, 1-4; areas, 4-5; forms, 5-7; methods of studying, 7-11.
- Grand Council, in Fascist Italy, 832-833, 835.
- Great Council, in Norman England, 21-22.
- Guillotine, in British House of Commons, 259.
- Hanotaux, Gabriel, quoted, 626-627.
- Hare, Thomas, proposes proportional representation, 205.
- Health, British Ministry of, 130-131.
- Heckling, in British campaigns, 193 note.
- Henry II, strong government in England, 20-21.
- Herrenhaus*, in Prussia, 661.
- High Court of Justice, in Great Britain, 371, 373, 376.
- Hindenburg, Field-Marshal Paul von, elected president of German Republic, 704; reflection, 704-705; use of emergency powers, 712-713; conduct of the presidency, 713-714.
- Hitler, Adolf, candidate for German presidency, 704; early leadership of National Socialists, 774; author of *Mein Kampf*, 775; becomes chancellor, 778-779; achieves dictatorship, 780-781; measures as dictator, 781-784.
- Holy Roman Empire, 645-646.
- Home Office, in Great Britain, 125-126.
- Home Rule, for Scotland, 410-411; movement in Ireland, 411-413.
- House of Commons, in England, origins, 27; democratization, 35-36; constituencies, 166-168; university representation, 168-169; number and distribution of members, 169-170; lack of periodic reapportionments, 170-171; electoral system in early nineteenth century, 171-173; reform acts, 174-177; electoral questions, 1885-1918, 177-179; Representation of the People Act of 1918, 179-181; present suffrage for men, 181-182; woman suffrage, 182-184; university representation, 169, 184; present status of plural voting, 184; surviving suffrage questions, 185; dissolution, 186-187; units for election, 187-188; qualifications of members, 189-190; eligibility of women, 190; personnel, 190-191; electoral campaigns, 191-196; elections, 196-200; vacating of seats, 200-201; problem of majority election, 202-204; problem of minority representation, 204-205; movement for proportional representation, 205-209; chamber occupied by, 233-234; officers, 241-242; speaker, 242-245; Committee of the Whole, 246-247; select committees, 247; standing committees, 247-250; rules of procedure, 252-254; daily order of business, 254-255; nature of debate, 255-257; salary of members, 256-257 note; closure, 258-260; votes and divisions, 260-261; records, 261; bill drafting, 263-264; procedure on bills, 264-267; adjustment of differences with House of Lords, 267-268; procedure on private bills, 269-271; forms of control over finance, 273-274; consideration of estimates of expenditure, 277-279; consideration of budget, 281-283; budgetary procedure appraised, 285-287; attempts to improve procedure, 287-288; obstacles, 288-289.
- House of Lords, in Great Britain, origins, 27; powers curtailed, 36-37; groups of members, 210-215; grounds of dissatisfaction with, 215-218; trouble of Liberals with, 218-219; restricted by Parliament Act, 219-222; reforms proposed in Bryce Report, 222-224; present party attitudes toward, 224-225; uses, 225-227; strong points, 227-228; possible modes of reconstruction, 228-229; surviving question, 229-231; chamber occupied by, 234-235; organization, 250-251; voting, 261 note; procedure on bills, 266-267; as a court, 377-378.
- Ilbert, C., quoted, 235 note.
- Impeachment, in Great Britain, 101; in France, 488; in Germany, 700, 791.

- Imperial conferences, British, 422-423.  
 Independent Labor party, in Great Britain, 327.  
 Independent Liberal party, in Great Britain, 319-322.  
 Independent Socialists, in Germany, secede from Social Democratic party, 665; invited to coöperate in provisional government of 1918, 668; demand for program of socialization, 670.  
 India, government, 418.  
 India Office, British, 125.  
 Initiative, adopted in Germany, 750-751; constitutional provisions, 752; workings, 752-753; status under Nazi government, 753.  
 Institute of Public Administration, British, 163.  
 Interpellation, in French Parliament, 564-566; in German Reichstag, 213.  
 Ireland, representative peers, 213; home rule problem to 1914, 411-413; settlement of 1920-22, 413-414; Free State and its government, 414-416; status of Northern Ireland, 416.  
 Irish Free State, created, 414-415; government, 415-416; dominion status, 423-425; legislative autonomy, 425-427; question of judicial appeal, 427-429.  
 Italy, unification, 809-811; country and people, 811-812; constitution, 812-813; king, 813-814; ministry before Fascist period, 814-815; Parliament before Fascist period, 815-818; other features of pre-Fascist government, 818-820; Quirinal and Vatican, 820; pre-Fascist political parties, 820-823; situation after World War, 824-825; rise of Fascism, 826-828; Fascisti in power, 828-829; Fascist doctrine, 829-830; Fascist organization, 831-832; Fascist government, 832-836, 839-840; plans for corporative state, 837-839; Fascism and church, 840-841.  
 Judges. *See* Courts.  
 Judicial Committee, of British privy council, 81-82, 420-421, 427-429.  
 Judicial review, in Great Britain, 54-55; in France, 471-472, 608-610; in republican Germany, 693-695; absence in Italy, 813.  
 Judiciary. *See* Courts.  
 Jury, in France, 602-603.  
 Justice of the peace, in Great Britain, 374-375; in France, 600.  
 Kaiser, German. *See* Emperor.  
 Kangaroo, form of closure in British House of Commons, 259-260.  
 King, in England in Anglo-Saxon period, 19; relation to early Parliament, 27-29; Tudors, 29-30; Stuarts, 30-31; decline of powers after 1689, 33-34; distinguished from crown, 59-61; title and descent, 69-71; religious tests, 71; immunities and rights, 71; civil list, 71-72, position in the government, 72-74; personal acts, 74-75; as counsellor, 75; symbol of imperial unity, 76-77; reasons for survival of monarchy, 77-79; compared with French president, 489-490; of Prussia becomes German emperor, 650, 655-656; in Italy, 813-814.  
*Komintern*, 860.  
*Komsomol*, in Soviet Russia, 868.  
*Kreis*, in Prussia, 798-799.  
*Kreistag*, in Prussia, 798.  
 Labor, British Ministry of, 130.  
 Labor party, in Great Britain, attitude toward the monarchy, 78; toward House of Lords, 225; in election of 1918, 320; rise to power, 322; first ministry, 323-324; second ministry, 325-327; distribution of strength, 334; assured position, 335-336; organization to 1918, 349-350; present local organization, 350-351; national organization, 351-353; selection of parliamentary candidates, 354; finances, 356-357.  
*Länder*, in Germany, altered by constitutional amendments, 680, 690; problems when Weimar constitution was made, 687-688; proposed dismemberment of Prussia, 688-690; constitutional provisions concerning, 690; general position after 1919, 691; question of federalism, 691-692; share in legislative power, 692-693; arrangements for administration, 695-

- 696; eclipse under Nazi régime, 696-698; future existence threatened, 698-699; representation in Reichsrat, 746-747; initiative and referendum, 752-753; brought under national control by Nazis, 778-781; courts, 788-792; local government in general, 793-796; local government in Prussia, 796-800; municipal government, 800-807.
- Landgerichte*, in German judicial system, 789.
- Landrat*, in Prussia, 798.
- Landtag*, in Prussian province, 797.
- Langsam, W. C., quoted, 838 note.
- Lateran Accord, 840.
- Law, of British constitution, 42-43; past and present systems, 359; English concept, 360; characteristics in England, 360-362; development of common law, 362-364; development of statute, 364-366; codifications, 366; equity, 367-368; how made by judges, 378-379; Roman element in France, 592-593; custom, 593-594; royal legislation, 594; Revolutionary and Napoleonic codes, 594-596; present form, 596-597; early development in Germany, 785-786; adoption of codes, 786-787.
- Law of Papal Guarantees, 820.
- League for French Action, 588-589.
- League for the Rights of Man and of the Citizen, in France, 591.
- League of Nations, British dominions as members of, 431-432.
- League of Patriots, in France, 589.
- Legitimists, in France, 1870-75, 459-463.
- Lenin, N., heads Russian revolutionary government, 860.
- Liberal party, in Great Britain, obstructed by House of Lords, 217-218; policy of curbing that chamber, 218-219; sponsors Parliament Act, 219; origins, 316; from 1832 to 1914, 316-318; during World War, 318-320; efforts to rehabilitate, 321-322; in election of 1931, 328; composition, 330-334; question of future, 336-337; local organization, 344-345; national organization, 348-349; finances, 355-356; auxiliary organizations, 357.
- Liberal Unionist party, in Great Britain, 317.
- Limited voting, proposed in Great Britain, 204.
- Lloyd-George, David, becomes British prime minister, 319; in post-war politics, 319-321.
- Local government, general features in Great Britain, 385-386; reform in boroughs, 387-388; reform in rural areas, 388-389; historic county, 390; administrative county, 390-394; districts and parishes, 394-395; borough charters, 395-396; borough government, 396-400; government of London, 400-401; central control over, 402-406; problems of reform, 406-407; world-wide influence of French system, 617; continuity, 617-618; before Revolution, 618-619; Revolutionary experiments, 619-620; Napoleonic reaction, 620-621; developments since Napoleon, 621-622; features today, 622-624; department, 624-629; *arrondissement*, 629; canton, 629-630; commune, 630-634; Paris, 634-635; criticisms, 636; proposed changes, 636-640; general features in Germany, 792-793; development in Prussia, 793-794; on eve of revolution of 1918, 794-795; changes after 1918, 795-796; province and other areas in Prussia, 796-800; municipalities, 800-805; in Berlin, 805-807; in Italy before Fascist period, 819-820; Fascist changes, 839-840; in Soviet Russia, 877-878.
- Local Government Act, of 1888 in Great Britain, 388-389; of 1929, 389, 392.
- Locke, John, writings, 33 note; influence, 441.
- London, government of, 400-401.
- Lord Chancellor, in Great Britain, 126-128; presiding officer in House of Lords, 250.
- Lords of appeal, in Great Britain, 213-214.
- Low, Sidney, quoted, 142.
- Lowell, A. Lawrence, quoted, 46-47, 96, 100, 292; on causes of multi-party system in France, 575.
- Lvov, George, heads provisional government in Russia, 854-856.



- MacDonald, Ramsay**, becomes prime minister, 323; second premiership, 325-327; heads "national government," 327-329.
- MacMahon, Marshal**, elected president of France, 461; rôle in Seize Mai crisis, 486, 505 note.
- Magistrat**, in German municipalities, 801-804.
- Magna Carta**, 23-24.
- Maine, Henry**, quoted, 481.
- Mandates**, British, 419-420.
- Matteotti, Giacomo**, murder, 834-835.
- Maximilian, Prince**, last imperial chancellor, 666-667.
- Mayor**, of English borough, 397; of French commune, 632-633. *See* *Bürgermeister*.
- Menshevik party**, rise in Russia, 857-858.
- Mill, John Stuart**, opposes secret ballot, 197; endorses proportional representation, 206.
- Millerand, Alexandre**, extraordinary use of presidential powers, 490.
- Ministries**, as executive departments in France, constitutional basis, 493-494; how created, 494-495; present list, 495-496; theoretical and actual position of the minister, 508-509; under-secretaries, 509-510; departmental cabinet, 510-511; permanent staff, 511-512; control over civil service, 513-515; in German Republic, 719.
- Ministry**, in Great Britain, contrasted with permanent civil service, 142-144; not composed of experts, 143-145; relations with subordinates, 145-146; distinguished from cabinet, 82; composition, 82-83; how formed, 87 ff.; prime minister, 88-90, 104-108; membership in Parliament, 91-92; distribution between houses, 92-93; party solidarity, 93-94; distribution of posts, 95-96; responsibility, 100-103, 294-296; stability, 298-299; composition in France, 495-496; how made up, 496-498; premier and his colleagues, 499-500; ministerial duties, 500-501; responsibility, 502-504; lack of solidarity, 504-505; short tenure, 505-506; elements of continuity, 506-507; initiative of legislation, 556-558; relation to parliamentary committees, 559-560; effects of interpellation, 564-565; rôle in financial legislation, 567-570; how affected by multi-party system, 573-576; in republican Germany, 714-718; in Italy before Fascist period, 814-815.
- Montesquieu, Charles Louis de S.**, political ideas and influence, 439-440, 446; quoted, 447 note.
- Muir, Ramsay**, quoted, 104 note.
- Municipal Corporations Act**, in Great Britain, 388.
- Municipal government**, in Great Britain, 395-400; London, 400-401; in France, 630-634; Paris, 634-635; in Germany, 800-805; Berlin, 805-807.
- Munro, William B.**, quoted, 145, 623.
- Mussolini, Benito**, early career, 826; leader of Fascist movement, 826-828; becomes premier, 828-829; rôle in Fascist party organization, 831-833; on Chamber of Deputies, 836 note; attitude toward Parliament, 834; plans for corporative state, 837-839.
- Napoleon I**, contributions to French government, 448-449; influence on French law, 595-596; influence on local government, 620-621; reorganizes Germany, 646; influence on Italian affairs, 810.
- Napoleon III**, president of Second French Republic, 452; becomes emperor, 452-453; downfall, 454-455.
- National Assembly**, in France, elected, 456-457; governs France in 1871-76, 457-463; makes constitution of Third Republic, 462-463; disbands, 46 note; present status as amending authority, 467-468; election of president of Republic, 476-478. *See* *Weimar Assembly*.
- National Bloc**, in France, 586-587.
- National Catholic Federation**, in France, 589.
- National Council of Corporations**, in Italy, 838-839.
- National Economic Council**, in Great Britain, 134; in Germany, 686-687.
- National Liberal Federation**, in Great Britain, 348-349.

- National Liberal party, in imperial Germany, 664.
- National list, in German elections, 736-737; in Italian elections, 835.
- National People's party, in Germany, 957-958; disbanded, 782.
- National Socialist party, in Germany, general features, 756-757; rise, 774-775; policies and objectives, 775-776; sources of support, 776-777; approach to power, 777-778; gains chancellorship, 778-779; steps toward dictatorship, 779-780; dictatorship realized, 780-781; sole survivor of Nazi régime, 782-783.
- National Union of Conservative and Constitutional Associations, in Great Britain, 345-346.
- Newfoundland, relinquishes dominion status, 424.
- Nominations, for British House of Commons, 188-189; for county councils in Great Britain, 391; for French Chamber of Deputies, 529-530; for German Reichstag, 730-740; in German cities, 805; for Italian Chamber of Deputies, 835.
- Non-voting, in British parliamentary elections, 199 note; in France, 528-529; in German Republic, 733-734.
- Norman Conquest, 20.
- Northern Ireland, government, 416.
- North German Confederation, prepares way for German Empire, 649-650.
- Oberlandesgerichte*, in German judicial system, 789.
- Oberpräsident*, in Prussian province, 797.
- Opposition Bench, in British House of Commons, 234.
- Oratory, parliamentary, in Great Britain, 257; in France, 563.
- Orders in council, in Great Britain, 67, 81, 148-149.
- Ordinances, in France, 486-487; in German Republic, 709-713, 749; in Italy, 815. *See* Orders in council, Administrative legislation.
- Ordre du jour*, in French Chamber of Deputies, 556.
- Organic laws, in France, 470-471.
- Orleanist period, in France, 450-451.
- Orleanists, monarchist faction in France in 1870-75, 459-463.
- Papacy, relations with Italian government, 820, 840-841.
- Papen, Franz von, German chancellor, 777-778.
- Paris, government, 634-635.
- Parish, place in English local government, 395.
- Parliament, in England, beginnings, 24-26; representative principle, 26; becomes bicameral, 26-27; growth of powers, 27-29; development under Tudors, 29-31; in seventeenth century revolution, 30-31; House of Commons democratized, 35-36; House of Lords curtailed, 36-37; power to amend constitution, 40-52; legal supremacy, 54-55; powers over private rights, 56-58; control over powers of crown, 61-63; relation to foreign affairs, 65; membership of ministers, 91-92; responsibility of ministers, 101-103; prime minister in, 106-107; delegation of legislative power, 136-139; and of judicial power, 140-141; dissolution, 186-187; physical surroundings, 232-235; prompt meeting after elections, 235-236; prorogation, 236; dissolution, 236; opening of a session, 236-238; closing of a session, 239; sittings, 239-241; officers, 241-245, 250; committees, 246-250, 251; rules of procedure, 252-254; order of business in House of Commons, 254-255; characteristics of debate, 255-257; restrictions on debate, 258-260; votes and divisions, 260-261; records, 261; general aspects of legislative process, 262-263; bill drafting, 263-264; procedure on bills, 264-267; adjustment of differences between the two houses, 267-268; royal assent to bills, 268-269; procedure on private bills, 269-271; confirmation of provisional orders, 271-272; forms of control over finance, 273-274; consideration of estimates of expenditure, 277-279; consideration of estimates of revenue, 280-283; financial procedure compared with

- American, 283-285; shortcomings of procedure, 285-287; efforts to improve, 287-288; obstacles, 288-289; powers in theory and fact, 290-291; changed relation to electorate, 291; control by cabinet, 291-294; means of enforcing ministerial responsibility, 294-296; relation to administration, 293-294, 297; dissatisfaction with, 301-302; difficulties of position, 302-303; proposed remedies, 303-304; proposals for devolution, 304-309; possible improvements without devolution, 309-310; bicameral plan adopted in France, 519-520; general relations of the two houses, 520-521; sessions, 547; publicity of proceedings, 548-549; status and pay of members, 549-550; officers, 550-551; committees, 551-555; rules, 555-556; government and private<sup>1</sup> members' bills, 556-558; workings of committee system, 558-560; debate, 561-563; voting, 563-564; interpellation, 564-565; relations between chambers, 565-567; financial legislation, 567-570; problems, 570-572; party situation, 578-583; question of one house or two in Germany, 731-732; electing the Reichstag, 732-740; powers of Reichstag, 741-742; officers, 743; committees, 743-744; procedure, 744-746; nature and structure of Reichsrat, 746-748; powers and functions of Reichsrat, 748-750; Reichsrat abolished, 750; Reichstag pushed aside by Nazis, 779-781 *passim*; in Italy before Fascist period, 815-818; under Fascist régime, 834-836. *See* House of Commons, House of Lords, Chamber of Deputies, Senate, Reichstag, Duma, etc.
- Parliament Act, of 1911, terms, 219-220; significance, 220-222.
- Parteiag*, in German Republic, 764-765.
- Parteivorstand*, in German Republic, 765.
- Parties, political, nature, 311-312; uses, 312-313; relation to cabinet system in England, 313-314; bi-party vs. multi-party, 314-315; history in Great Britain before World War, 316-318; during World War, 318-320; end of war-time coalition, 321; Liberal reunion, 321-322; rise of Labor, 322-324; five years of Conservative dominance, 324-325; Labor's return to power, 325-327; return to coalitionism, 327-330; distribution of strength before World War, 330-332; changes since 1918, 332-334; outlook, 334-338; machinery in Parliament, 340-342; development of local organization, 342-345; national organization, 345-354; finances, 354-357; auxiliary organizations, 357-358; French contrasted with English, 573; multi-group system in France, 573-574; reasons for it, 575-576; effects of it, 577-578; main groups in Chamber, 578-582; in Senate, 582-583; oscillations since 1914, 585-588; extra-parliamentary groups, 588-591; in German Empire, 663-665; representation in Weimar Assembly, 672-674; increased importance in German Republic, 755-756; National Socialists, 756-757; National People's party, 957-958; German People's party, 958; Center party, 958-959; Democratic party, 959-960; Social Democratic party, 760-761; Communist party, 761-762; general features of organization, 763-764; national machinery, 764-765; local machinery, 765; propaganda, 766-767; finance, 767-769; tendency to "splinter parties," 769; economic and social particularism, 770; doctrinairism, 770; bureaucracy, 771; a decade of history, 771-774; rise of National Socialists, 774-777; troubled politics, 1930-32, 777-778; National Socialists capture chancellorship, 778-779; tendencies toward dictatorship, 779-780; suppression of all except National Socialists, 781-783; a one-party régime, 783-784; in Italy before Fascist period, 821-823; Socialist ascendancy after World War, 824-825; rise of Fascism, 826-829; Fascist doctrine, 829-830; Fascist organization, 831-833; in Russia before 1917, 850-858 *passim*; the Communists, 865-869.
- Peerage, in Great Britain, 211-213.

- Pensions, in British civil service, 158.  
Pensions, ministry of, in Great Britain, 121-122.
- Petitions, in British House of Commons, 255.
- Pius X, authorizes Italian Catholics to vote, 822.
- Plural voting, in Great Britain, 177-178, 184; proposed in France, 527; practiced in German municipalities, 804.
- Podestà*, in Fascist Italy, 839.
- Poincaré, Raymond, quoted, 468 note, 477-478, 500-501.
- Police, in Soviet Russia, 881-882.
- Political Bureau, in Russian Communist party, 867.
- Political parties. *See* Parties, political.
- Popolari*, founded in Italy, 822-823.
- Popular Democrats, in France, 580.
- Popular sovereignty, growth of concept, 445-446.
- Prefect, of French department, created, 620; appointment, 625; dual rôle, 625-626; difficulties of position, 626-627; staff, 627-628; of Italian province, 819, 839-840.
- Premier. *See* Prime minister, Cabinet, Ministry.
- Prerogative, royal, 61-62.
- President, in France, theory and fact of position, 474-475; election, 475-478; qualifications and reëligibility, 478-479; list of incumbents, 480; general aspects of powers, 481-482; executive powers, 482-484; legislative powers, 484-486; ordinance power, 486-487; responsibility, 487-488; uses, 489-490; varying rôle, 490; proposals to increase powers, 490-492; appointment of premier, 496-497; proposed modes of election in German Republic, 701-702; plan adopted, 703; elections since 1920, 703-705; term, 705-706; suspension and removal, 706-707; general position, 707; executive powers, 707-708; legislative powers, 708-709; powers under Article 48, 709-713; general restrictions upon powers, 713; Hindenburg as president, 713-714.
- Preтура*, Italian, 818.
- Preuss, Hugo, prepares plan for electing Weimar Assembly, 672; heads commission to draft a constitution, 675-676.
- Previous question, in British House of Commons, 258.
- Prime minister, in Great Britain, rise, 88; appointment, 88-90; selection of ministerial colleagues, 90-95; distribution of posts, 95-96; as head of cabinet, 104; superiority over other ministers, 104-105; relations with sovereign, 106; position in Parliament, 106-107; heavy burdens, 107-108. *See* Cabinet, Ministry.
- Primrose League, in Great Britain, 357.
- Prince of Wales, title created, 408.
- Private bills, in Great Britain, 269-271.
- Private members' bills, in Great Britain, 263, 209-301; in France, 556-558.
- Private rights, English Bill of Rights, 31-32; how protected in Great Britain, 56-58; French Declaration of Rights, 442; lack of provisions in constitution of Third Republic, 464; guarantees in German republican constitution, 681-684; status under Nazi régime, 684; in Soviet Russia, 883-884.
- Privy Council, in Great Britain, membership, 79-80; meetings, 80; functions, 80-81; committees, 81-82; judicial committee, 420-421, 427-429.
- Procedure, parliamentary. *See* Parliament.
- Propaganda, by German political parties, 766-767.
- Proportional representation, early proposals in Great Britain, 205; considered in 1918, 206-207; movement in later days, 207-209; tried in France, 537-538; abandoned, 538; used in electing Weimar Assembly, 672; adopted in German Republic, 734-735; emasculated by Nazis, 735-736; system described, 736-737; advantages, 737-738; disadvantages, 738-740; in German municipal elections, 805; introduced in Italy in 1919, 816.
- Prorogation, of British Parliament, 236.
- Protectorates, British, 419.
- Province, in Prussia, 796-798; in Italy, 819.

- Provinzialrat*, in Prussian province, 797.  
 Provisional orders, in Great Britain, 271-272.
- Prussia, rise, 645-646; rôle in unification of Germany, 649-650; king becomes German emperor, 650; control over amending imperial constitution, 652; special position under imperial régime, 652-655; government prior to 1918, 660-662; question of dismemberment, 687-690; national control extended by Nazis, 697-698; early development of civil service, 721-723; development of local government, 793-794; on eve of revolution of 1918, 794-795; changes after 1918, 795-796; province, 796-797; intermediate areas, 798-799; commune, 799-800; municipal government, 800-805; government of Berlin, 805-807.
- Questions, in British Parliament, 294-295. *See* Interpellation.
- Radical party, in imperial Germany, 664.
- Radical Socialists, in France, 581-582, 584.
- Rapporteur*, in French committee system, 559.
- Recall, of German president, 706.
- Redistribution of Seats Act, in Great Britain, 176-177.
- Referendum, in Great Britain, 51 note; adopted in Germany, 750-751; constitutional provisions, 752; workings, 752-753; status under Nazi government, 753.
- Reform Act, of 1832 in Great Britain, 175-176; of 1867, 176; of 1884, 176. *See* Suffrage, Elections.
- Regionalism, in France, 638-640.
- Registration, of voters in Great Britain, 195-196; in France, 527-528.
- Registration societies, in Great Britain, 343.
- Reichsgericht*, and judicial review, 693-695; general functions, 789-790.
- Reichsrat, in German Republic, composition, 746-747; voting, 747-748; amending power, 748; legislative power, 748-749; ordinance power, 749-750; abolished, 750.
- Reichstag, in German Empire, 658-660; democratic basis in Republic, 732-733; system of proportional representation, 734-735; emasculated by Nazis, 735-736; system described, 736-737; its advantages, 737-738; its disadvantages, 738-740; lack of genuine strength, 741; constitutional powers and limitations, 741-742; officers, 743; committees, 743-744; procedure, 744-746; eclipsed under Nazi régime, 779-781.
- Representation, in early English Parliament, 26.
- Representation of the People Act, of 1918 in Great Britain, 179-184. *See* Reform Act.
- Republican Committee of Commerce, Industry, and Agriculture, in France, 590.
- Republican Democratic Alliance, in France, 584.
- Republican Democratic Union, in France, 580.
- Republican Federation, in France, 583.
- Republican National League, in France, 589-590.
- Republicanism, rise in France, 444-445.
- Returning officers, in British parliamentary elections, 187-188.
- Revenues. *See* Budget.
- Revolution, of 1688-89 in England, 31; of 1789 in France, 441-446; of 1830 in France, 450; of 1848 in France, 451; of 1918 in Germany, 667-668; French and Russian compared, 844-845; of 1905 in Russia, 850-853; of March, 1917, 856-857; of November, 1917, 859-862.
- Rivet Law, 460.
- Roman law, influence in England, 361; in France, 592-593; in Germany, 785.
- Royal assent, in Great Britain, how given, 268-269.
- Rule of law, English conception of, 57.
- Rules, of British House of Commons, 252-254; of French parliamentary chambers, 555-556.
- Rural districts, in Great Britain, 394.
- Russia, physical features, 845-846; peoples, 846-847; tsarist absolutism, 847-848; earlier reforms, 848-849;

- revolution of 1905, 850-853; political tension during World War, 853-854; bourgeois revolution of 1917, 854-855; Bolshevik revolution of 1917, 858-860; new régime consolidated, 860-862; one-party government, 863; Communist party, 863-869; national constitution, 869-870; rise and organization of Union of Socialist Soviet Republics, 870-874; its government, 874-881; police, 881-882; controlling economic life, 882-883; private rights, 883-884; religion, 884-885; Soviet problems and prospects, 885-887.
- Russian Socialist Federated Soviet Republic, established, 800; constitution, 869-870; position in Union of Socialist Soviet Republics, 872-873; government, 874-878. *See* Union of Socialist Soviet Republics.
- Sait, E. M., quoted, 509.
- Scotland, representative peers, 213; constitutional status and government, 409-410; home rule movement, 410-411.
- Scrutin d'arrondissement*, in France, 535-539.
- Scrutin de liste*, in France, 535-539.
- Second ballot, proposed in Great Britain, 203; employed in France, 534; in German Empire, 650.
- Second chamber. *See* House of Lords, Senate, Parliament.
- Second Empire, in France, 452-457.
- Second Republic, in France, 451-452.
- Secretariat, of British cabinet, 111-112; of Russian Communist party, 867.
- Secretary of state, in England, 120.
- Senate, in France, responsibility of ministers to, 502-504; as a high court of justice, 521; original composition, 540-541; later changes, 541-542; candidacies and elections, 542-543; ability and power, 543-544; degree of conservatism, 544-545; proposed changes, 545-546; sessions, 547-548; publicity of proceedings, 548-549; status and pay of members, 549-550; committees, 553-555; procedure, 562; relations with Chamber in legislation, 566-567; rôle in financial legislation, 567-570; party situation, 582-583; in Italy, 817-818, 836 note.
- Separation of powers, in Great Britain, 53-54; growth of doctrine in Europe, 448; absence in Soviet Russia, 876.
- Shire, in Anglo-Saxon Britain, 20.
- Siegfried, André, quoted, 525 note, 585.
- Simon de Montfort, convokes a parliament, 25.
- Sindaco*, of Italian commune, 819.
- Sinn Féin*, seeks Irish independence, 413-414.
- Social Democratic party, in imperial Germany, 664-665; scism in 1917, 665; forms provisional government in 1918, 667-668; favors moderate political reform, 670; in German Republic, 760-761; effective organization, 763, 766; finances, 767-768; in period 1919-29, 771-774; disbanded, 782.
- Social Revolutionary party, in Russia, 850, 857-858.
- Socialist party, rise in Italy, 822; ascendancy after World War, 824-825; overcome by Fascists, 826-828.
- Soltau, Roger H., quoted, 560 note.
- Sovarkom*, in Soviet Russia, 880.
- Soviets, early appearance in Russia, 855 note; revival in 1917, 856-857; in present Russian organization, 874-878.
- Spartacists, in Germany, 670-671.
- Speaker, of British House of Commons, beginnings, 242; election, 242-243; duties, 243-244; non-partisanship, 244-245; perquisites, 245.
- Speech from the Throne, in British Parliament, 237-238.
- Spencer, Henry R., quoted, 812.
- Splitterparteien*, in Germany, 769.
- Staatsgerichtshof*, in German judicial system, 791.
- Stalin, Joseph, positions held in Russian Communist party, 867.
- State Planning Commission, in Soviet Russia, 883.
- States, types, 4-5; forms of government, 5-7; in imperial Germany, position and powers, 652-653; constitutional inequalities, 653-655. *See* *Länder*.

- Statutes, as sources of English constitutional law, 42-43, 49-51; as sources of powers of British crown, 61-63; relation to common law in Great Britain, 364-366; rôle in development of French law, 594. *See* Law.
- Statuto del Regno*, granted, 810; extended to all Italy, 812-813.
- Statutory orders, in Great Britain, 136.
- Stein, Baron von, on Prussian civil service, 722-723.
- Stresemann, Gustav, leader of German People's party, 758.
- Stuarts, English government under, 30-31.
- Sturzo, Don Luigi, founds *Popolari* in Italy, 822.
- Suffrage, in Great Britain in early nineteenth century, 171-173; broadened by reform acts, 175-177; questions during 1885-1918, 177-179; for men under act of 1918, 181-182; for women, 182-184; present status of plural voting, 184; surviving questions, 185; in English local elections, 391; in France, 525-526; question of enfranchising women, 526-527; question of family voting, 527; in German Empire, 658-659; in kingdom of Prussia, 661; in German Republic, 732-733; non-voting, 733-734; in German municipalities, 804; in Italy before Fascist period, 816; at present day, 835 note; in Soviet Russia, 876-877.
- Swain, J. W., quoted, 849-850.
- Syndicalism, in French civil service, 516-518.
- Syndicates, in Italian corporative state, 837-838.
- Taxation, connection with rise of English Parliament, 27-28; arrangements in British budget, 280; in France, 567-570.
- Thiers, Adolphe, made chief of executive power in France, 457; given title of president, 460; becomes a republican, 461; resigns, 467.
- Third International, relation with Russian Communist party, 869.
- Tocqueville, Alexis de, on English constitution, 50-51.
- Toleration Act, 32 note.
- Tory party, in England, 316.
- Township, in Anglo-Saxon times, 20.
- Trade Disputes and Trade Unions Act, in Great Britain, 150.
- Trade Union Congress, in Great Britain, 353.
- Transport, ministry of in Great Britain, 129-130.
- Treasury, in Great Britain, evolution, 115-116; officials, 116-117; functions, 117-119; control over civil service, 151-152; control over estimates of expenditure, 274-276; over estimates of revenue, 280.
- Treasury Bench, in British House of Commons, 233-234.
- Treaty-making, in Great Britain, 65-66; by British dominions, 430; in France, 484.
- Tribunal for the Defense of the State, in Italy, 841.
- Tsar, rôle in Russian government, 847-848; political reforms, 848-849; position in early twentieth century, 849-850; abdication, 855.
- Tudors, English government under, 29-30.
- Twenty-five Points, of National Socialists, formulated by Feder, 774; contents, 775-776.
- Uffici*, in Italy, 816.
- Under-secretaries, in Great Britain, 83; in France, 509-510.
- Unified Socialists, in France, 581-582, 584-585.
- Union of Economic Interests, in France, 590.
- Union of Socialist Soviet Republics, rise, 870-871; organization, 871-873; general features of government, 874-878; All-Union Congress, 878-879; Central Executive Committee, 879; Council of People's Commissars, 880; courts, 881; police, 881-882; control over economic life, 882-883; private rights, 883-884; religion, 884-885; problems and prospects, 885-887.
- Universities, represented in British House of Commons, 169, 184.\*
- Urban districts, in Great Britain, 394.

- Vatican City, state of, 840.  
 Vatican, quarrel with Italian government, 820; reconciliation under Fascist régime, 840-841.  
 Veto power, in France, 485; in Germany, 708.  
 Victor Emmanuel III, king of Italy, 813-814.  
 Votes on account, in British financial procedure, 277-278.  
 Wales, governmental relations with England, 408-409.  
 War, participation in by British dominions, 431.  
 War cabinet, in Great Britain, 85-86.  
 War Office, in Great Britain, 120-121.  
 Webb, Sidney and Beatrice, on status of monarchy in Britain, 78 note.  
 Weimar Assembly, elected, 671-672; political complexion, 672-674; makes tentative arrangements for government, 674-675; frames and adopts republican constitution, 675-676; moves to Berlin, 677.  
 Wells, R. H., quoted, 799.  
 Westminster, Palace of, 232-235.  
 Westminster, Statute of, 423.  
 Whig party, in England, 316.  
 Whips, in British House of Commons, 341-342.  
 Whitehall, 114.  
 Whitley councils, in British civil service, 160-162.  
 William the Conqueror, 20.  
 Wilson, Woodrow, view of congressional committees, 553.  
*Wilenagemot*, 19-20.  
 Woman suffrage, rise of question in Great Britain, 178-179; in act of 1918, 182-183; completed by act of 1928, 183; question in France, 526-527; provided for in Germany, 732-733.  
 Workers' Social Democratic party, in Russia, 850, 857-858.  
 Writs, electoral, in Great Britain, 187-188.  
*Zemstvos*, introduced by Alexander II in Russia, 849.  
 Zurcher, Arnold J., quoted, 730.